THE

ENGLISH AND EMPIRE DIGEST

WITH

COMPLETE AND EXHAUSTIVE

ANNOTATIONS.

SUPPLEMENT No. 2

DEALING WITH

VOLUMES I—XXXI.

In this Volume the new English Cases reported up to 1st January, 1927, are included, and other new cases are included so far as the Volumes of Reports of the same were available in London on that date.

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VOLUMES I—XXXI.

BEING CUMULATIVE AND CONTAINING ALL THE MATTER OF THE PREVIOUS SUPPLEMENT, AND, IN ADDITION, ALL THE NEW CASES AND ANNOTATIONS WHICH HAVE BEEN DECIDED IN THE INTERVAL

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PUBLISHERS' PREFACE.

In accordance with their original plan the Publishers are bringing "THE ENGLISH AND EMPIRE DIGEST" up to date, the method adopted being very similar to that employed in the Supplement to the "LAWS OF ENGLAND," and the system will be found by Subscribers to be equally simple in use.

Supplement No. 1 was published last year, and Supplement No. 2, to which this note is a preface, brings the published Volumes of the main Work up to January 1st, 1927.

The use of this Supplement will enable subscribers to find with the minimum of time and trouble all the judicial decisions and annotations reported since the first thirty-one Volumes were each and severally published.

As regards English cases additional citations and annotations are preceded by the number of the case in the original volume, while new cases follow as far as possible the arrangement in the original volume, and are given the number of the case which they should follow, with the addition of a letter of the alphabet, beginning with the letter "a."

In dealing with the Scottish and Irish decisions and the decisions of the Overseas Dominions, where they can be justifiably connected with a specific English case in the original volume, or in the Supplement, or with a specific Colonial case in the original volume, that fact is indicated by giving them the number borne by the English case, or the letter of the alphabet borne by the Colonial case, followed by a serial number in Roman numerals. Cases that cannot be joined in this manner are marked with two letters of the alphabet, the first one being the letter "s," and are placed as near as possible to the English or Colonial case which they most resemble.

As regards the Table of Cases to the Supplement the name of the title in which the case is cited is given in an abbreviated form between the number of the original volume in which the title appears and, as regards English cases, the number of the case, or, as regards Scottish and Irish cases and decisions of the Overseas Dominions, the number of the page of the Supplement on which the case is dealt with. The abbreviated forms of the titles are set out below :—

TABLE OF ABBREVIATIONS OF THE TITLES IN THE WORK.

FULL TITLE.	ABBREVIATIONS.
Vol. I.	
ACTION	Action
ADMIRALTY	Adm.
AGENCY	Agcy.
Vol. II.	
AGRICULTURE	Agric.
ALIENS	Aliens
ANIMALS	Animals
ARBITRATION	Arbn.
Vol. III.	
AUCTION AND AUCTIONEERS	Auct.
BAILMENT	Bailmt.
BANKERS AND BANKING	Bank.
BARRISTERS	Barr.
BASTARDY	Basty.
Vols. IV. & V.	
BANKRUPTCY AND INSOLVENCY	Bkpcy.
Vol. VI.	
BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS	B. of Exch.
Vol. VII.	
BILLS OF SALE	B. of Sale
BONDS	Bonds
BOUNDARIES, FENCES AND PARTY WALLS	Bounds.&F.
BUILDING CONTRACTS, ENGINEERS & ARCHITECTS	Bldg. Conts.
BUILDING SOCIETIES	Bldg. Soc.
BURIAL AND CREMATION	Burial
Vol. VIII.	
CARRIERS	Carr.
CHARITIES	Char.
CHOSES IN ACTION	Chos.
CLUBS	Clubs
Vols. IX. & X.	
COMPANIES	Coys.
Vol. XI.	
COMMONS AND RIGHTS OF COMMON	Comns.
COMPULSORY PURCHASE OF LAND AND COMPENSATION	Comp. Pchs.
CONFLICT OF LAWS	Confl.
CONSTITUTIONAL LAW	Const. L.
Vol. XII.	
CONTRACT	Contr.
Vol. XIII.	
COPYHOLDS	Cohlds.
COPYRIGHT AND LITERARY PROPERTY	Coprt.
CORONERS	Crnrs.
CORPORATIONS	Corpns.
COUNTY COURTS	Cty. Cts.
Vols. XIV. & XV.	
CRIMINAL LAW AND PROCEDURE	Crim.
Vol. XVI.	
CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL	Cntmpt.
COURTS	Courts
CROWN PRACTICE	Cr. Pract.
Vol. XVII.	
CUSTOM AND USAGES	Custom
DAMAGES	Damgs.
DEEDS AND OTHER INSTRUMENTS	Deeds
DEPENDENCIES INCLUDING DOMINIONS, DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS	Dep.
Vol. XVIII.	
DESCENT AND DISTRIBUTION	Desct.
DISCOVERY, INSPECTION AND INTERROGATORIES	Discy.
DISTRESS	Distr.
Vol. XIX.	
EASEMENTS AND PROFITS À PRENDRE	Easmt.
ECCLESIASTICAL LAW	Eccl.
EDUCATION	Educ.
Vol. XX.	
ELECTIONS	Elect.
ELECTRIC LIGHTING AND POWER	Electric
EQUITY	Eqy.
Vol. XXI.	
ESTATE AND OTHER DEATH DUTIES	E.D.
ESTOPPEL	Estpl.
EXECUTION	Exon.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS

A. C. (preceded by date)	Law Reports, Appeal Cases, House of Lords, since 1890 (*e.g.*, [1891] A. C.)	Eng.
A. Jur. Rep.	Australian Jurist Reports	Aus.
A. L. T.	Australian Law Times	Aus.
A. R.	Ontario Appeals	Can.
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1841	Eng.
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842	Eng.
Adam ...	Adam's Justiciary Reports (Scotland), 1893—(current) ...	Scot.
Add. ...	Addams' Ecclesiastical Reports, 3 vols., 1822—1826	Eng.
Agra ...	Agra High Court	Ind.
Agra F. B.	Agra High Court, Full Bench	Ind.
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833	Ir.
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841	Ir.
Aleyn ...	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649 ...	Eng.
All. ...	New Brunswick Reports (Allen)	Can.
Alta. L. R.	Alberta Law Reports	Can.
Amb. ...	Ambler's Reports, Chancery, 1 vol., 1716—1783	Eng.
And. ...	Anderson's Reports, Common Pleas, fol., 2 parts in one vol.,	Eng.
Andr. ...	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740	Eng.
Anst. ...	Anstruther's Reports, Exchequer, 3 vols., 1792—1797	Eng.
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875-	Eng.
App. Ct. Rep. ...	Appeal Court Reports	N.Z.
	South African Law Reports, Appellate Division	S. Af.
Architects' L. R.	Architects' Law Reports, 4 vols., 1904—1909	Eng.
Argus L. R. ..	Argus Law Reports	Aus.
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848 ...	Scot.
Arm. M. & O. ..	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842	Ir.
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839 ...	Eng.
Arn. & H. ..	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841	Eng.
Ashb.	Ashburner's Principles of Equity, 1902	Eng.
Asp. M. L. C. ..	Aspinall's Maritime Law Cases, 1870—(current)	Eng.
	Atkyns' Reports, Chancery, 3 vols., 1736—1754	Eng.
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law	Eng.
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani	Eng.
B.	Barber's Gold Law	S. Af.
B. & Ad.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—	Eng.
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822	Eng.
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822	Eng.
B. & C. R. (preceded by date)	Reports of Bankruptcy and Companies Winding up Cases, 1918—(current) (*e.g.*, [1918—19] B. & C. R.)	Eng.
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870	Eng.
B. C. R.	British Columbia Reports	Can.
B. Dig.	Bose's Digest	Ind.
B. L. R.	Bengal Law Reports	Ind.
B. L. R. A. C.	Bengal Law Reports, Appeal Cases	Ind.
B. L. R. P. C.	Bengal Law Reports, Privy Council	Ind.
B. L. R. Sup. Vol. ...	Bengal Law Reports, Supp. Vol.	Ind.
B. W. C. C. ...	Butterworths' Workmen's Compensation Cases, 1907—(current)	Eng.
Bac. Abr. ...	Bacon's Abridgment	Eng.
Bail Ct. Cas. ...	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854	Eng.

Baild.	Baildon's Select Cases in Chancery (Selden Society, Vol. X.)	Eng.
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814	Ir.
Bankr. & Ins. R.	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855 ...	Eng.
Bar. & Arn. ...	Barron and Arnold's Election Cases, 1 vol., 1843—1846 ...	Eng.
Bar. & Aust. ...	Barron and Austin's Election Cases, 1 vol., 1842	Eng.
Barn. Ch. ...	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741 ...	Eng.
Barn. K. B. ...	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734	Eng.
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760	Eng.
Batt.	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826	Ir.
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830 ...	Ir.
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838—1866	Eng.
Beav. & Wal. ...	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846	Eng.
Beaw.	Beawes's Lex Mercatoria	Eng.
Bell, C. C. ...	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860	Eng.
Bell, Ct. of Sess.	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792	Scot.
Bell, Ct. of Sess. fol.	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795	Scot.
Bell, Dict. Dec.	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833	Scot.
Bell, Sc. App. ...	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850	Scot.
Bellewe	Bellewe's Cases *temp.* Richard II., King's Bench, 1 vol. ...	Eng.
Belt's Sup. ...	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756	Eng.
Ben.	Benloe's Reports, Common Pleas, fol., 1 vol., 1357—1579 ...	Eng.
Benl.	Benloe's (or Bendloe's) Reports, King's Bench, fol., 1 vol., 1440—1627	Eng.
Ber.	New Brunswick Reports (Berton)	Can.
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822—1834 ...	Eng.
Bing. N. C. ...	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840 ...	Eng.
Biss. & Sm. ...	Bisset and Smith's Digest	S. Af.
Bitt. Prac. Cas.	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876	Eng.
Bitt. Rep. in Ch.	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884	Eng.
Bl. Com. ...	Blackstone's Commentaries	Eng.
Bl. D. & Osb. ...	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848	Ir.
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819—1821	Eng.
Bli. N. S. ...	Bligh's Reports, House of Lords, New Series, 11 vols., 1827—1837	Eng.
Bluett	Bluett's Isle of Man Cases	I. of M.
Bom.	Bombay High Court Reports	Ind.
Bom. A. C. ...	Bombay Reports, Appellate Jurisdiction	Ind.
Bom. Cr. Ca. ...	Bombay Reports, Crown Cases	Ind.
Bom. O. C. ...	Bombay Reports, Original Civil Jurisdiction	Ind.
Bos. & P. ...	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804	Eng.
Bos. & P. N. R.	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807	Eng.
Bott.	Bott's Laws Relating to the Poor, 2 vols., 6th ed., 1827 ...	Eng.
Bourke	Bourke's Reports	Ind.
Br. & Col. Pr. Cas.	British and Colonial Prize Cases, 3 vols., 1914—1919	Eng.
Bract.	Bracton De Legibus et Consuetudinibus Angliæ	Eng.
Bro. Abr. ...	Sir R. Brooke's Abridgement	Eng.
Bro. C. C. ...	W. Brown's Chancery Reports, 4 vols., 1778—1794	Eng.
Bro. Ecc. Rep. ...	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872	Eng.
Bro. N. C. ...	Sir R. Brooke's New Cases, 1 vol., 1515—1558	Eng.
Bro. Parl. Cas. ...	J. Brown's Cases in Parliament, 8 vols., 1702—1800 ...	Eng.
Bro. Supp. to Mor.	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.	Scot.
Bro. Synop. ...	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827	Scot.
Brod. & Bing. ...	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819	Eng.
Brod. & F. ...	Broderick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864	Eng.
Broun	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845 ...	Scot.
Brown. & Lush.	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—	Eng.
Brownl. ...	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624	Eng.
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714—1715	Scot.

Buch. ...	Buchanan's Reports of the Supreme Court of the Cape of Good Hope, 1868—1879	S. Af.
Buch. A. C.	Buchanan's Reports of Appeal Court (Cape)	S. Af.
Buchan. ...	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813	Scot.
Buck ...	Buck's Cases in Bankruptcy, 1 vol., 1816—1820	Eng.
Bull. N. P.	Buller's Nisi Prius (published, London, 1772)	Eng.
Bulst. ...	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626	Eng.
Bunb. ...	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741 ...	Eng.
Burr. ...	Burrow's Reports, King's Bench, 5 vols., 1756—1772	Eng.
Burr. S. C.	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776	Eng.
Burrell ...	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840	Eng.
	Court of Appeal Reports, 3 vols., 1867—1877	N.Z.
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841	Eng.
C. B.	Common Bench Reports, 18 vols., 1845—1856	Eng.
C. B. N. S. ...	Common Bench Reports, New Series, 20 vols., 1856—1865 ...	Eng.
C. B. R.	Canadian Bankruptcy Reports Annotated, 1920—(current) ...	Can.
C. C. Ct. Cas. ...	Central Criminal Court Cases (Sessions Papers), 1834—1913 ...	Eng.
C. L. Ch. ...	Common Law Chambers	Can.
C. L. J.	Cape Law Journal	S. Af.
C. L. J. N. S. ...	Canada Law Journal, New Series, 1865—(current)	Can.
C. L. J. O. S. ...	Canada Law Journal, Old Series, 10 vols., 1855—1864 ...	Can.
C. L. R.	Common Law Reports, 3 vols., 1853—1855	Eng.
C. L. R.	Commonwealth Law Reports	Aus.
C. L. R.	Calcutta Law Reporter	Ind.
C. L. T.	Canadian Law Times	Can.
C. L. T. Occ. N.	Canadian Law Times, Occasional Notes	Can.
C. P.	Upper Canada Common Pleas	Can.
C. P. D.	Law Reports, Common Pleas Division, 5 vols., 1875—1880 ...	Eng.
C. P. D.	Cape Provincial Division Reports	S. Af.
C. R. [date] A. C.	Canadian Reports, Appeal Cases	Can.
C. T. R.	Cape Times Reports of the Supreme Court of the Cape of Good Hope	S. Af.
C. W. N.... ...	Calcutta Weekly Notes	Ind.
Cab. & El. ...	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885	Eng.
Cald. Mag. Cas.	Caldecott's Magistrates' Cases, 1 vol., 1776—1785	Eng.
Calth.	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618	Eng.
Cam. Cas. ...	Cameron's Supreme Court Cases	Can.
Cam. Prac. ...	Cameron's Supreme Court Practice	Can.
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816	Eng.
Can. Com. Cas. ...	Commercial Law Reports of Canada	Can.
Can. Crim. Cas.	Canadian Criminal Cases, Annotated	Can.
Can. Gaz. ...	Canadian Gazette	Can.
Can. Ry. Cas. ...	Canadian Railway Cases	Can.
Car. & Kir. ...	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853	Eng.
Car. & M. ...	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1842	Eng.
Car. C. L. ...	Carrington's Treatise on Criminal Law	Can.
Card. Doc. Ann.	Cardwell's Documentary Annals of the Reformed Church of England, 2 vols., 1546—1716	Eng.
	New Brunswick Reports (Carleton)	Can.
Carp. Pat. Cas. ..	Carpmael's Patent Cases, n2 vols., 1602—1842	Eng.
	Carter's Reports, Commo Pleas, fol., 1 vol., 1664—1673 ...	Eng.
	Cases on British North America Act (Cartwright)	Can.
Carth.	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700 ...	Eng.
Cary	Cary's Reports, Chancery, 1 vol.	Eng.
Cas. in Ch. ...	Cases in Chancery, fol., 3 parts, 1660—1697	Eng.
Cas. Pract. K. B.	Cases of Practice, King's Bench, 1 vol., 1655—1775	Eng.
Cas. Sett. ...	Cases of Settlements and Removals, 1 vol., 1685—1727 ...	Eng.
Cas. *temp.* Finch	Cases *temp.* Finch, Chancery, fol., 1 vol., 1673—1680 ...	Eng.
Cas. *temp.* King	Select Cases *temp.* King, Chancery, fol., 1 vol., 1724—1733 ...	Eng.
Cas. *temp.* Talb.	Cases in Equity *temp.* Talbot, fol., 1 vol., 1730—1737 ...	Eng.
Cass. Dig. ...	Cassells' Digest	Can.
Ch. (preceded by date)	Law Reports, Chancery Division, since 1890 (*e.g.*, [1891] 1 Ch.)	Eng.
Ch. App. ...	Law Reports, Chancery Appeals, 10 vols., 1865—1875 ...	Eng.
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Chip.	New Brunswick Reports (Chipman)	Can.

Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822 ...	Eng.
Cl. & Fin. ...	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—	Eng.
Cl. & Sc. Dr. Cas.	Clark and Scully's Drainage Cases	Can.
Clay.	Clayton's Reports and Pleas of Assizes at Yorke, 1 vol., 1631—1650	Eng.
Clif. & Rick. ...	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884	Eng.
Clif. & Steph. ...	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872	Eng.
Co. A.	Cook's Lower Canada Admiralty Court Cases	Can.
Co. Ent. ...	Coke's Entries	Eng.
Co. Inst. ...	Coke's Institutes	Eng.
Co. L. J. ...	Colonial Law Journal	N.Z.
Co. Litt. ...	Coke on Littleton (1 Inst.)	Eng.
Co. Rep. ...	Coke's Reports, 13 parts, 1572—1616	Eng.
	Nova Scotia Reports (Cochran)	Can.
Cockb. & Rowe	Cockburn and Rowe's Election Cases, 1 vol., 1833	Eng.
Coll. .	Collyer's Reports, Chancery, 2 vols., 1844—1846	Eng.
Coll. Jurid.	Collectanea Juridica, 2 vols.	Eng.
Colles .	Colles' Cases in Parliament, 1 vol., 1697—1713	Eng.
Colt. .	Coltman's Registration Cases, 1 vol., 1879—1885	Eng.
Com. .	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740	Eng.
Com. Cas. ...	Commercial Cases, 1895—(current)	Eng.
Com. Dig. ...	Comyns' Digest	Eng.
Comb.	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698	Eng.
Con. & Law. ...	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843	Ir.
Cong. Dig. ...	Congdon's Digest	Can.
Const	Const's edition of Bott's Poor Laws, 3 vols., 1807	Eng.
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Coop. *temp.* Brough.	C. P. Cooper's Cases *temp.* Brougham, Chancery, 1 vol., 1833—1834	Eng.
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Cout.	Coutlees' Unreported Cases	Can.
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Cowp.	Cowper's Reports, King's Bench, 2 vols., 1774—1778	Eng.
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Kel. ..	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	Eng.
Kel. W. ..	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734...	Eng.
Keny. ...	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759 ...	Eng.
Keny. Ch.	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754	Eng.
Kerr	New Brunswick Reports (Kerr)	Can.

Kilkerran	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752	Scot.
Kn. & Omb.	Knapp and Ombler's Election Cases, 1 vol., 1834—1835 ...	Eng.
Knapp	Knapp's Reports, Privy Council, 3 vols., 1829—1836	Eng.
Knox	Knox's Reports	Aus.
Konst. & W. Rat. App.	Konstam and Ward's Reports of Rating Appeals, 1 vol., 1909—1912	Eng.
Konst. Rat. App. ...	Konstam's Reports of Rating Appeals, 2 vols., 1904—1908 ...	
L. & G. *temp.* Plunk. ...	Lloyd and Goold's Reports *temp.* Plunkett, Chancery (Ireland), 1 vol., 1834—1839	Ir.
L. & G. *temp.* Sugd. ...	Lloyd and Goold's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1835	Ir.
L. & Welsb.	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., 1829—1830	Eng.
L. C. & M. Gaz.	Local Courts and Municipal Gazette	Can.
L. C. J.	Lower Canada Jurist	Can.
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L. C. R.	Lower Canada Reports	Can.
L. G. R. ...	Local Government Reports, 1902—(current)	Eng.
L. J. Adm. ...	Law Journal, Admiralty, 1865—1875	Eng.
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L. J. Ex. Eq. ...	Law Journal, Exchequer in Equity, 1835—1841	Eng.
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L. J. P.	Law Journal, Probate, Divorce and Admiralty, 1875—(current)	Eng.
L. J. P. & M. ...	Law Journal, Probate and Matrimonial Cases, 1858—1859,	Eng.
L. J. P. C. ...	Law Journal, Privy Council, 1865—(current)	Eng.
L. J. P. M. & A.	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865	Eng.
L. Jo.	Law Journal Newspaper, 1866—(current)	Eng.
L. L. R.	Leader Law Reports	S. Af.
L. M. & P. ...	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851	Eng.
L. N.	Legal News	Can.
L. R. A. & E. ...	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865	Eng.
L. R. C. C. R.	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875	Eng.
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L. R. Ind. App. Supp. Vol.	Law Reports, India Appeals Privy Council, Supplementary Volume, 1872—1873	Eng.
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L. T. ...	Law Times Reports, 1859—(current)	Eng.
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Lane ...	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611 ...	Eng.
Lat. ...	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628	Eng.
Laws. Reg. Cas.	Lawson's Registration Cases, 1895—(current)	Eng.
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Lee *temp.* Hard.	T. Lee's Cases *temp.* Hardwicke, King's Bench, 1 vol., 1733—1738	Eng.

Leg. Rep.	Legal Reporter	Ir.
Legge	Legge's Reports	Aus.
Leon.	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615	Eng.
Lev.	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696	Eng.
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Lib. Ass.	Liber Assisarum, Year Books, 1—51 Edw. III.	Eng.
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Macph. (Ct. of Sess.)	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873	Scot.
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Rast.	Rastell's Entries	Eng.
Rayn.	Rayner's Tithe Cases, 3 vols., 1575—1782	Eng.
Real Prop. Cas. ...	Real Property Cases, 2 vols., 1843—1847	Eng.
Rep. Ch.	Reports in Chancery, fol., 3 vols., 1615—1710	Eng.
Rep. in C. of A.... ...	Reports in Courts of Appeal	N.Z.
Res. & Eq. Jud. ...	New South Wales Reserved and Equity Judgments	Aus.
Reserv. Cas.	Reserved Cases	Ir.
Rick. & M.	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889	Eng.
Rick. & S.	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894	Eng.
Ridg. L. & S.	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1795	Ir.
Ridg. Parl. Rep. ...	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796	Ir.
Ridg. *temp.* H.	Ridgeway's Reports *temp.* Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1744—1746	Eng.
Ritch. Eq. Rep. ...	Ritchie's Equity Reports	Can.
Rob. Eccl.	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853 ...	Eng.
Rob. L. & W.	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851	Eng.
Robert. App.	Robertson's Scotch Appeals, House of Lords, 1 vol., 1709—1727	Scot.
Robin. App.	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	Scot.
Roll. Abr.	Rolle's Abridgment of the Common Law, fol., 2 vols.	Eng.
Roll. Rep.	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625 ...	Eng.
Rom.	Romilly's Notes of Cases in Equity, 1 part, 1772—1787 ...	Eng.
Roscoe's B. C.	Roscoe, Digest of Building Cases	Eng.
Rose	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	Eng.
Ross, L. C.	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.	Eng.
Rowe	Rowe's Reports (England and Ireland), 1 vol., 1798—1823 ...	Eng.
Rul. Cas.	Campbell's Ruling Cases, 25 vols.	Eng.
Russ.	Russell's Reports, Chancery, 5 vols., 1824—1829	Eng.
Russ. & M.	Russell and Mylne's Reports, Chancery, 2 vols,, 1829—1833 ...	Eng.

Russ. & Ry.	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	Eng.
Rus. E. R.	Russell's Election Reports...	Can.
Ry. & Can. Cas. ...	Railway and Canal Cases, 7 vols., 1835—1854	Eng.
Ry. & Can. Tr. Cas. ...	Railway and Canal Traffic Cases, 1855—(current)	Eng.
Ry. & M.	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826 ...	Eng.
Ryde & K. Rat. App. ...	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—1904	Eng.
Ryde, Rat. App. ...	Ryde's Rating Appeals, 3 vols., 1871—1893	Eng.
S.	Searle's Reports of the Supreme Court of the Cape of Good Hope	S. Af.
S. A. L. J.	South African Law Journal	S. Af.
S. A. L. R.	South Australian Law Reports	Aus.
S. A. L. R.	South African Law Reports	S. Af.
S. A. R.	Reports of the High Court of the South African Republic, 1881—1892	S. Af.
S. A. S. R.	South Australian State Reports, since 1921 (*e.g.*, [1921] S. A. S. R.)	Aus.
S. C.	Reports of the Supreme Court of the Cape of Good Hope from 1880	S. Af.
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 (*e.g.*, [1906] S. C.)	Scot.
S. C. (H. L.) (preceded by date)	Court of Session Cases (Scotland) (House of Lords), since 1906 (*e.g.*, [1906] S. C. (H. L.))	Scot.
S. C. (J.) (preceded by date)	Court of Justiciary Cases (Scotland), since 1906 (*e.g.*, [1906] S. C. (J.))	Scot.
S. C. R.	Canada, Supreme Court Reports	Can.
S. L. T.	Scots Law Times, 1893 (current)	Scot.
S. Q. R.	Queensland State Reports	Aus.
S. R.	Reports of the High Court of Southern Rhodesia	S. Af.
S. R. C.	Stuart's Lower Canada Reports	Can.
S. R. N. S. W.	New South Wales, State Reports	Aus.
S. R. Q.	Queensland Reports, Supreme Court	Aus.
S. V. A. R.	Stuart's Vice-Admiralty Reports	Can.
S. W. A.	South-West Africa Law Reports	S.-W. Af.
Saint	Saint's Digest of Registration Cases, 1843—1906, 1 vol. ...	Eng.
Salk.	Salkeld's Reports, King's Bench, 3 vols., 1689—1712	Eng.
Sask. L. R.	Saskatchewan Law Reports	Can.
Sau. & Sc.	Sausse and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840	Ir.
Saund.	Saunders's Reports, King's Bench, 2 vols., 1666—1672 ...	Eng.
Saund. & A.	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904	Eng.
Saund. & B.	Saunders and Bidder's Locus Standi Reports, 1905—(current)	Eng.
Saund. & C.	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848 ...	Eng.
Saund. & M.	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858	Eng.
Sav.	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591 ...	Eng.
Say.	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756 ...	Eng.
Sc. Jur.	Scottish Jurist, 46 vols., 1829—1873	Scot.
Sc. L. R.	Scottish Law Reporter, 1865—1924	Scot.
Sc. R. R.	Scots Revised Reports	Scot.
Sch. & Lef.	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806	Ir.
Scott	Scott's Reports, Common Pleas, 8 vols., 1834—1840	Eng.
Scott, N. R.	Scott's New Reports, Common Pleas, 8 vols., 1840—1845 ...	Eng.
Sea. & Sm.	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860	Eng.
Sel. Cas. Ch.	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.)	Eng.
Selwyn's N. P.	Selwyn's Abridgement of the Law of Nisi Prius	Eng.
Sess. Cas. K. B. ...	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747	Eng.
Sett. & Rem.	Cases adjudged in K. B. concerning Settlements & Removals, 1 vol., 1710—1742	Eng.
Sh. (Ct. of Sess.) ...	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838	Scot.
Sh. & Macl.	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838	Scot.
Sh. Dig.	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868	Scot.
Sh. Just.	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831	Scot.
Sh. Sc. App.	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824	Scot.
Sh. Teind Ct.	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831	Scot.
Shep. Touch.	Sheppard's Touchstone of Common Assurances	Eng.
Show.	Shower's Reports, King's Bench, 2 vols., 1678—1695	Eng.
Show. Parl. Cas. ...	Shower's Cases in Parliament, fol., 1 vol., 1694—1699	Eng.
Sid.	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670	Eng.

Sim.	Simons' Reports, Chancery, 17 vols., 1826—1852	Eng.
Sim. & St.	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826 ...	Eng.
Sim. N. S.	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852 ...	Eng.
Skin.	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697 ...	Eng.
Sm. & Bat.	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825	Ir.
Sm. & G.	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857 ...	Eng.
Smith, K. B.	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806 ...	Eng.
Smith, L. C.	Smith's Leading Cases, 2 vols.	Eng.
Smith, Reg. Cas. ...	C. L. Smith's Registration Cases, 1895—(current)	Eng.
Smythe	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840	Ir.
Sol. Jo.	Solicitors' Journal, 1856—(current)	Eng.
Spence	Spence's Equitable Jurisdiction of the Court of Chancery ...	Eng.
Spinks	Spinks' Prize Court Cases, 2 parts, 1854—1856	Eng.
St. R. Qd. (preceded by date)	Queensland State Reports, since 1902 (*e.g.*, [1902] St. R. Qd.)	Aus.
Stair Rep.	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681	Scot.
Stark.	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823	Eng.
State Tr.	State Trials, 34 vols., 1163—1820	Eng.
State Tr. N. S. ...	State Trials, New Series, 8 vols., 1820—1858	Eng.
Stewart	Stewart's Nova Scotia Admiralty Reports, 1803—1813 ...	Can.
Stockton	Stockton's Vice-Admiralty Report and Digest	Can.
Story	Story's Commentaries on Equity Jurisprudence	Eng.
Stra.	Strange's Reports, 2 vols., 1716—1747	Eng.
Stu. M. & P.	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853	Scot.
Stuart	Sessions Cases (Stuart)	Scot.
Stuart, Adm.	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856 ...	Can.
Stuart, Adm. N. S. ...	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859—1874	Can.
Stuart, K. B.	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada), 1810—1835	Can.
Sty.	Style's Reports, King's Bench, fol., 1 vol., 1646—1655 ...	Eng.
Sw.	Swabey's Report, Admiralty, 1 vol., 1855—1859	Eng.
Sw. & Tr.	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865	Eng.
Swan.	Swanston's Reports, Chancery, 3 vols., 1818—1821	Eng.
Swin.	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841 ...	Scot.
Syme	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829 ...	Scot.
T. & M.	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851	Eng.
T. H.	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909	S. Af.
T. Jo.	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685	Eng.
T. L.	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current)	S. Af.
T. L. R.	The Times Law Reports, 1884—(current)	Eng.
T. P.	Reports of the Supreme Court of the Transvaal, 1910—(current)	S. Af.
T. P. D.	South African Law Reports, Transvaal Provincial Division ...	S. Af.
T. Raym.	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683	Eng.
T. S.	Reports of the Supreme Court of the Transvaal, 1902—1909 ...	S. Af.
Taml.	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830	Eng.
Tas. L. R.	Tasmanian Law Reports	Aus.
Taunt.	Taunton's Reports, Common Pleas, 8 vols., 1807—1819 ...	Eng.
Tax Cas.	Tax Cases, 1875—(current)	Eng.
Tay.	Taylor's King's Bench Reports	Can.
Temp. Wood	Manitoba Reports *temp.* Wood	Can.
Term Rep.	Term Reports (Durnford and East), fol., 8 vols., 1785—1800 ...	Eng.
Terr. L. R.	Territories Law Reports	Can.
Thom.	Nova Scotia Reports (Thomson)	Can.
Toth.	Tothill's Transactions in Chancery, 1 vol., 1559—1646 ...	Eng.
Town St. Tr.	Townsend, Modern State Trials	Eng.
Trem. P. C.	Tremaine Pleas of the Crown, 1 vol., 1667	Eng.
Trist.	Tristram's Consistory Judgments, 1 vol., 1872—1890	Eng.
Tru.	New Brunswick Reports (Trueman)	Can.
Tudor, L. C. Merc. Law.	Tudor's Leading Cases on Mercantile and Maritime Law ...	Eng.
Tudor, L. C. Real Prop.	Tudor's Leading Cases on Real Property	Eng.
Turn. & R.	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825 ...	Eng.
Tyr.	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835	Eng.
Tyr. & Gr.	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836	Eng.
U. C. Jur.	Upper Canada Jurist	Can.
U. C. L. J. N. S. ...	Canada Law Journal, New Series, 1865—(current)	Can.

U. C. L. J. O. S. ...	Canada Law Journal, Old Series, 10 vols., 1855—1864 ...	Can.
U. C. R.	Upper Canada Reports, Queen's Bench	Can.
Udal	Fiji Law Reports (Udal)	Fiji.
V. L. R.	Victorian Law Reports	Aus.
V. R.	Victorian Reports	Aus.
V. R. (Adm.)	Victorian Reports (Admiralty)	Aus.
V. R. (Eq.)	Victorian Reports (Equity)	Aus.
V. R. (Law)	Victorian Reports (Law)	Aus.
Vaugh.	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673 ...	Eng.
Vent.	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691	Eng.
Vern.	Vernon's Reports, Chancery, 2 vols., 1680—1719	Eng.
Vern. & Scr.	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788	Ir.
Ves.	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817	Eng.
Ves. & B.	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814 ...	Eng.
Ves. Sen.	Vesey Sen.'s Reports, 2 vols., 1747—1756	Eng.
Vin. Abr.	Viner's Abridgment of Law and Equity, fol., 22 vols.	Eng.
Vin. Supp.	Supplement to Viner's Abridgment of Law and Equity, 6 vols.	Eng.
W.	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857	S. Af.
W. A. L. R.	West Australian Law Reports	Aus.
W. A'B. & W.	Webb, A'Beckett and Williams' Victorian Reports	Aus.
W. & W.	Wyatt and Webb	Aus.
W. C. C.	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., 1898—1907	Eng.
W. H. C.	South African Law Reports, Witwatersrand High Court ...	S. Af.
W. Jo.	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640	Eng.
W. L. D.	South African Law Reports, Witwatersrand Local Division ...	S. Af.
W. L. R.	Western Law Reporter	Can.
W. L. T.	Western Law Times	Can.
W. N. (preceded by date)	Law Reports, Weekly Notes, 1866—(current) (*e.g.*, [1866] W. N.)	Eng.
W. N.	Calcutta Weekly Notes	Ind.
W. R.	Weekly Reporter, 54 vols., 1852—1906	Eng.
W. R.	Sutherland's Weekly Reporter	Ind.
W. R.	Weekly Reporter, reporting cases in the Cape Provincial Division	S. Af.
W. W. & A'B.	Wyatt, Webb and A'Beckett	Aus.
W. W. R.	Western Weekly Reports	Can.
Wallis by Lyne ...	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791 ...	Ir.
Web. Pat. Cas.	Webster's Patent Cases, 2 vols., 1602—1855	Eng.
Welsh, Reg. Cas. ...	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840	Ir.
Went. Off. Ex. ...	Wentworth's Office and Duty of Executors	Eng.
West	West's Reports, House of Lords, 1 vol., 1839—1841	Eng.
West *temp.* Hard. ...	West's Reports *temp.* Hardwicke, Chancery, 1 vol., 1736—1740	Eng.
West. Tithe Cas. ...	Western's London Tithe Cases, 1 vol., 1592—1822	Eng.
White	White's Justiciary Reports (Scotland), 3 vols., 1886—1893 ...	Scot.
White & Tud. L. C. ...	White and Tudor's Leading Cases in Equity, 2 vols.	Eng.
Wight	Wightwick's Reports, Exchequer, 1 vol., 1810—1811	Eng.
Will. Woll. & Dav. ...	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837	Eng.
Will. Woll. & H. ...	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839	Eng.
Willes	Willes' Reports, Common Pleas, 1 vol., 1737—1758	Eng.
Wilm.	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770	Eng.
Wils.	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774	Eng.
Wils. & S.	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835	Scot.
Wils. Ch.	J. Wilson's Reports, Chancery, 2 vols., 1818—1819	Eng.
Wils. Ex.	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817 ...	Eng.
Win.	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625 ...	Eng.
Wm. Bl.	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779	Eng.
Wm. Rob.	William Robinson's Reports, Admiralty, 3 vols., 1838—1850 ...	Eng.
Wms. Saund.	Williams' Notes to Saunders' Reports, 2 vols.	Eng.
Wolf. & B.	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864	Eng.
Wolf. & D.	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858 ...	Eng.
Woll.	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841	Eng.
Wood	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798	Eng.
Y. A. D.	Young's Vice-Admiralty Reports	Can.

Y. & C. Ch. Cas.	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841–1843	Eng.
Y. & C. Ex. ...	Younge and Collyer's Reports, Exchequer in Equity, 4 vols.	Eng.
Y. & J.	Younge and Jervis' Reports, Exchequer, 3 vols., 1826—1830	Eng.
Y. B.	Year Books	Eng.
Y. B. (Rolls Series) ..	Year Books (Rolls Series)	Eng.
Y. B. (Sel. Soc.)...	Year Books (Selden Society)	Eng.
Yelv. ... *...	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613	Eng.
You.	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832	Eng.

ABBREVIATIONS

USED IN THIS WORK.

(For Abbreviations used in citing Reports, *see* pp. xiii—xxix, *ante*.)

A.-G.	for Attorney-General.
Act.	,, Actiengesellschaft.
Add.	,, Additional.
Admlty.	,, Admiralty.
Affd.	,, Affirmed.
Affg.	,, Affirming.
Akt.	,, Aktiengesellschaft; Aktiebolaget; Aktieselskabet.
Alta.	,, Alberta.
Anon.	,, Anonymous.
Apld.	,, Applied.
Appct.	,, Applicant.
Appln.	,, Application.
Appln.	,, Application to Register a Trade Mark.
Applt.	,, Appellant.
Apprvd.	,, Approved.
Arbn.	,, Arbitration.
Archbp.	,, Archbishop.
Art.	,, Article.
Ass. Tax Case	,, Assessed Tax Case.
Assce.	,, Assurance.
Assocn.	,, Association.
B. C.	,, Borough Council.
B. C.	,, British Columbia.
Bkpcy.	,, Bankruptcy.
Bkpt.	,, Bankrupt.
Bldg. Soc.	,, Building Society.
Bp.	,, Bishop.
C. A.	,, Court of Appeal.
C. & S. L. Ry. Co.	,, City & South London Railway Co.
C. C. A.	,, Court of Criminal Appeal.
C. C. R.	,, County Court Rules.
C. C. R.	,, Court of Crown Cases Reserved.
C. L. P. Act.	,, Common Law Procedure Act.
C. L. Ry. Co.	,, Central London Railway Co.
C. O. R.	,, Crown Office Rules.
C. S. U. C.	,, Consolidated Statutes of Upper Canada.
Ca. sa.	,, *Capias ad satisfaciandum*.
Cale. Ry. Co.	,, Caledonian Railway Co.
Ch.	,, Chancery.
Ch. Div.	,, Chancery Division.
Co.	,, Company.
Co-op. Assocn.	,, Co-operative Supply Association.
Comrs.	,, Commissioners.
Consd.	,, Considered.
Corpn.	,, Corporation.
Ct.	,, Court.
Ct. of Ch.	,, Court of Chancery.
Ct. of Eq.	,, Court of Equity.
Ct. of R.	,, Court of Review.
D. C.	,, Divisional Court.
Dbtd.	,, Doubted.

Deft.	for Defendant.
Distd.	„ Distinguished.
Div. Ct.	„ Divisional Court.
Eccl. Comrs.	„ Ecclesiastical Commissioners.
Eccl. Ct.	„ Ecclesiastical Court.
Ex. Ch.	„ Exchequer Chamber.
Ex p.	„ *Ex parte.*
Exch.	„ Exchequer.
Exor.	„ Executor.
Exorship.	„ Executorship.
Expld.	„ Explained.
Extd.	„ Extended.
Extrix.	„ Executrix.
Fi. fa.	„ *Fieri facias.*
Folld.	„ Followed.
G. & S. W. Ry. Co.	„ Glasgow & South Western Railway Co.
G. C. Ry. Co.	„ Great Central Railway Co.
G. E. Ry. Co.	„ Great Eastern Railway Co.
G. N. of Scotland Ry. Co.	„ Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co	„ Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co.	„ Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland	„ Great Southern & Western Railway Co. of Ireland.
G. W. Ry. Co.	„ Great Western Railway Co.
Govt.	„ Government.
Grdns.	„ Guardians or Guardians of the Poor.
H. C. of A.	„ High Court of Australia.
H. L.	„ House of Lords.
I. R. Comrs.	„ Inland Revenue Commissioners.
Insce.	„ Insurance.
JJ.	„ Justices.
Jud. Act	„ Judicature Act.
K. B. Div.	„ King's Bench Division.
L. & B. Ry. Co.	„ London & Brighton Railway Co.
L. & N. E. Ry. Co.	„ London & North Eastern Railway Co.
L. & N. W. Ry. Co.	„ London & North Western Railway Co.
L. & S. W. Ry. Co.	„ London & South Western Railway Co.
L. & Y. Ry. Co.	„ Lancashire & Yorkshire Railway Co.
L. B.	„ Local Board.
L. B. & S. C. Ry. Co.	„ London, Brighton & South Coast Railway Co.
L. C.	„ Lord Chancellor.
L. C. & D. Ry. Co.	„ London, Chatham & Dover Railway Co.
L. C. C.	„ London County Council.
L. Elec. Ry. Co.	„ London Electric Railway Co.
L. G. Board	„ Local Government Board.
L.J.	„ Lord Justice.
L.JJ.	„ Lords Justices.
L. M. & S. Ry. Co.	„ London, Midland & Scottish Railway Co.
L. T. & S. Ry. Co.	„ London, Tilbury & Southend Railway Co.
M. S. Act	„ Merchant Shipping Act.
M. S. & L. Ry. Co.	„ Manchester, Sheffield & Lincolnshire Railway Co.
Mags.	„ Magistrates.
Man.	„ Manitoba.
Mentd.	„ Mentioned.
Met. Dist. Ry. Co.	„ Metropolitan District Railway Co.
Met. Ry. Co.	„ Metropolitan Railway Co.
Mid. G. W. Ry. Co.	Midland Great Western Railway Co.
Mid. Ry. Co.	„ Midland Railway Co.
Mtge.	„ Mortgage.
Mtgee.	„ Mortgagee.
Mtgor.	„ Mortgagor.
N. B.	„ New Brunswick.
N. B. Ry. Co.	„ North British Railway Co.
N. E. Ry. Co.	„ North Eastern Railway Co.
N. F.	„ Not Followed.
N. P.	„ Nisi Prius.

N. S. .	for Nova Scotia.
N. W. P.	,, North-West Provinces.
N. W. T.	,, North-West Territories.
Ont. .	,, Ontario.
Ord. .	,, Order.
Overd. .	,, Overruled.
P. C. .	,, Privy Council.
P. E. I. .	,, Prince Edward Island.
Petn. .	,, Petition or Election Petition.
Pltf. .	,, Plaintiff.
Q. B. Div.	,, Queen's Bench Division.
Qu. .	,, *Quære.*
Que. .	Quebec.
R. C. .	Rural Council.
R. D. C.	Rural District Council.
R. S. A.	Rural Sanitary Authority.
R. S. C.	Revised Statutes of Canada.
R. S. C.	Rules of the Supreme Court, 1883.
Refd. .	Referred.
Regn. of Trade Mk.	Registration of Trade Mark.
Regr. of Trade Mks.	Registrar of Trade Marks.
Resp. . . .	Respondent.
Restg. . . .	Restoring.
Revsd. . . .	Reversed.
Revsg. . . .	Reversing.
Ry. Co. . .	Rail. Co. or Railway Co.
S. C.	Same Case.
S. C. (name of colony following)	Supreme Court of a Colony.
S. E. . .	Settled Estates.
S. E. & C. Ry. Co.	South Eastern & Chatham Railway Co.
S. E. Ry. Co.	South Eastern Railway Co.
S. P.	Same Point.
S.S.	Steamship.
Sask.	Saskatchewan.
Sched.	Schedule.
Sci. fa.	*Scire facias.*
Sect.	Section.
Set. Land Act	Settled Land Act.
Settlmt. .	Settlement.
Soc. . .	Society.
Soc. Anon. .	Société Anonyme, etc.
Solr. . .	,, Solicitor.
Trade Mk. .	,, Trade Mark.
Tram. Co. .	,, Tramways Company.
U. C. . . .	,, Urban Council.
U. D. C. . .	,, Urban District Council.
U. S. A. . .	,, United States of America.
Union Assmt. Com.	,, Union Assessment Committee.
Urban S. A. . .	,, Urban Sanitary Authority.
V.-C. . . .	Vice-Chancellor.
Workmen's Comp. Act	Workmen's Compensation Act.
Y. T. . . .	Yukon Territory.

MEANING OF TERMS

USED IN CLASSIFYING ANNOTATING CASES.

different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases, except such as are classified as "Mentioned," are grouped according to the points in the case which they annotate: within these groups they are listed chronologically, except such as are classified as "Referred to," which come at the end of the group and are arranged *inter se* in chronological order. Cases which annotate the annotated case generally are grouped together after cases which annotate specific points, similarly arranged, and are followed by cases classified as "Mentioned" arranged chronologically *inter se*. The terms used in classifying the annotating cases are as follows:—

"APPLIED" (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.

"APPROVED" (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.

"CONSIDERED" (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.

"DISTINGUISHED" (Distd.).—This expression is used where the earlier case is not necessarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.

"DOUBTED" (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.

"EXPLAINED" (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.

"EXTENDED" (Extd.).—Compare "APPLIED," *supra*.

"FOLLOWED" (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.

"NOT FOLLOWED" (N.F.).—Compare "FOLLOWED," *supra*, to which it is the adverse.

"OVERRULED" (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.

"REFERRED" (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.

"MENTIONED" (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.

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ACTION.

Part I.—Definitions.

30. *Add. Annotation :*—**Mentd.** The Wilhelmina, [1923] P. 112.

31. *Add. Annotation :*—**Consd.** Ware & De Freville v. Motor Trade Assocn., [1921] 3 K. B. 40.

38. *Add. Annotations :* **Mentd.** Banbury v. Bank of Montreal, [1918] A. C. 626; Neville v. London Express Newspaper (1918), 88 L. J. K. B. 282.

41. *Add. Annotation :* **Mentd.** Civil Service Co-op. Soc. v. McGrigor's Trustee, [1923] 2 Ch. 347.

42. *Add. Annotation :*- **Dbtd.** *Re* Thomson's Mortgage Trusts, Thomson v. Bruty, [1920] 1 Ch. 508.

45. *Annotation :*—**Mentd.** McCreagh v. Cox & Ford (1923), 92 L. J. K. B. 855.

48a. Summons—Real Property Limitation Act, 1833 (c. 27).]—A summons by a second mtgee. against the first mtgee. & other persons interested in the surplus proceeds of sale to have it determined whether he is entitled to repayment of the principal moneys owing on the second mtge. & all arrears of interest & costs, & to obtain payment accordingly, is in substance an action by a beneficiary for execution of the trusts of the surplus proceeds & is not an "action or suit" for the recovery of "interest in respect of money charged upon or payable out of land" within sect. 12 of the above Act.—*Re* THOMSON'S MORTGAGE TRUSTS, THOMSON v. BRUTY, [1920] 1 Ch. 508; 89 L. J. Ch. 213; 123 L. T. 138; 64 Sol. Jo. 375.

64. *Add. Annotation :*—**Reld.** Thomson's Mortgage Trusts, Thomson v. Bruty, [1920] 1 Ch. 508.

64a. Summons - Real Property Limitation Act, 1833 (c. 27).]—*Re* THOMSON'S MORTGAGE TRUSTS, THOMSON v. BRUTY, No. 48a, *ante*.

82. *Add. Annotations :* - **Consd.** *Re* Jauncey, Bird v. Arnold, [1926] Ch. 471. **Mentd.** *Re* Jordison, Raine v. Jordison, [1922] 1 Ch. 440.

87. *Annotations :* -**Consd.** Robinson v. R., [1921] 3 K. B. 183. **Refd.** Chester v. Bateson, [1920] 1 K. B. 829 R. v. Hammer, [1923] 2 K. B. 786. **Mentd.** R. v. Cannon Row Police Station, Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98.

89. *Annotations :* **Refd.** First National Reinsurance v. Greenfield, [1921] 2 K. B. 260. **Mentd.** The Saxicava (1924), 10 T. L. R. 281.

90. For "under the above sect." read "under Married Women's Property Act, 1893 (c. 63), s. 2."

Add. Annotation : - **Apld.** *Re* Emery, Emery v. Emery, [1923] P. 184.

90a. [— — — —.]—The Food Controller requisitioned certain cattle feeding stuffs under Defence of the Realm Regulations, but whether under reg. 2 B. or reg. 2 F. was doubtful. By reg. 2 B. the price to be paid for goods taken thereunder was to be determined by the tribunal by which claims for compensation under Defence of the Realm Regulations were determined, but was not to exceed a certain maximum price fixed by an Ord. in Council. By reg. 2 F. compensation for goods taken thereunder was to be paid as determined by an arbitrator, taking into account the cost of production of the goods & a reasonable profit. The maximum price fixed by the Ord. in Council had been paid. The Defence of the Realm Losses Commission having refused to entertain a claim for compensation, the owners of the goods presented a petition of right, claiming that the Food Controller had acted under reg. 2 F., & that they were entitled to compensation fixed by arbn. thereunder. At the trial the judge held that the Controller had acted under reg. 2 B., & dismissed the petition. On July 22, 1920, suppliants gave notice of appeal. On Aug. 16, 1920, Indemnity Act, 1920 (c. 18), was passed: *Held:* (1) the appeal was not a "proceeding instituted" within sect. 1 of the Act; (2) those words do not include a final judgment given before the passing of the Act, & therefore the appeal well lay. - ROBINSON (J.) & Co. v. R., [1921] 3 K. B. 183; 90 L. J. K. B. 1177; 125 L. T. 675; 37 T. L. R. 698, C. A.

Annotations : -*As to* (1) **Reld.** Bowling v. Camp (1922), 128 L. T. 342. *Generally,* **Mentd.** Fort Frances Pulp & Power Co. v. Manitoba Free Press Co., [1923] A. C. 695; Swift v. Board of Trade (1924), 94 L. J. K. B. 529; Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271.

90b. [— — — —.]—A person who has lodged a caveat against probate of a will is not, though his action compels the exors. to take proceedings, so much the actor in the proceedings as to be liable to give security for costs. *Re* EMERY, EMERY v. EMERY, [19[illegible]; 92 L. J. P. 138; 39 T. L. R. 71[illegible]; *In the Goods of* EMERY, EMERY v. EMERY, 130 L. T. 127.

PART I. SECT. 1, SUB-SECT. 5.

sa. *Action—Claim for damages & injunction—Transfer of Land Act,* 1893 (No. 11), s. 117.]—The term "action at law" in the above sect. embraces an action of the nature of a suit in equity, *e.g.* a claim for an injunction & damages in respect of trespass to & interference with a right of way.—STRELITZ BROTHERS v. BRITSALL (1912), 15 W. A. L. R. 12.—**AUS.**

sb. —— *Divorce petition—Insolvency Act,* 1915 (No. 2671), s. 174.]—The word "action" in the above sect. does not include a proceeding by petition in divorce.—*Re* HARVEY, [1920] V. L. R. 112.—**AUS.**

sc. —— *Petition of right.*]—A petition of right is not an "action." The definitions of "actions" in Judicature Act & rules are merely a convenient method of interpreting the statute & rules, adopted for the sake of brevity & simplicity, & not for the purpose of changing the true nature of things.—MILLAR v. R., [1921] 49 [illegible] R. 93; 19 O. W. N. 154; 58 D. L. R. 585.—**CAN.**

sd. *Proceeding in [illegible]—Application for relief against [illegible] Act.*]—The above Act empowers a judge of the [illegible] Ct. to dispense with the [illegible] therein contained. Applt. [illegible] against resp. under a [illegible] notwithstanding that resp. was [illegible] the protection of the Act. Resp. applied to a county ct. judge as "local judge" of the Supreme Ct. for relief, who made an order against resp. dispensing with the restrictions of the Act. *Held:* the local judge had no jurisdiction, as the proceeding was not a proceeding in an "action," as required under the wording of the Ord. in Council, June 16, 1906. Resp.'s proper remedy against applt. was by injunction to restrain applt. from invading his rights under the Act.—HANNA v. COSTERTON, [1919] 1 W. W. R. 936; 44 D. L. R. 47*c*.—**CAN.**

104. *Add. Annotation :* —**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180.

106. *Add. Annotations :* —**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Cheshire County Council *v.* Hopley (1923), 130 L. T. 123; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227.

107. *Add. Annotations :* **Apld.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227. **Mentd.** *Re* Pain, Gustavson *v.* Haviland, [1919] 1 Ch. 38.

114. *Add. Annotation :* **Refd.** Huyton & Roby Gas Co. *v.* Liverpool Corpn., [1926] 1 K. B. 146.

116a. — — **Claim for damages—Right to prior general declaration.**]—Where the substantial object of an action is damages & not the ascertainment of a common right for future guidance, pltfs. ought not to be allowed to split up a cause of action & first obtain a declaration, & then in a second action work out its result. JONES *v.* CORY BROTHERS & CO., LTD., THOMAS *v.* GREAT MOUNTAIN COLLIERIES CO., LTD. (1921), as reported in 152 L. T. Jo. 70, C. A.

117. For "**new subsidence**" read "**recurring tort.**"

118. *Add. Annotations :* *As to* (1) **Refd.** Boynton *v.* Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Kennard *v.* Cory, [1922] 1 Ch. 265; Huyton & Roby Gas Co. *v.* Liverpool Corpn. (1925), 42 T. L. R. 116.

122. *Add. Annotations :* **Apld.** Wilson *v.* United Counties Bank, [1920] A. C. 102. **Consd.** Ord *v.* Ord, [1923] 2 K. B. 432. **Apld.** The Koursk, [1924] P. 140. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Debenham *v.* Perkins (1925), 133 L. T. 252.

129. *Add. Annotation :*—**Refd.** Ord *v.* Ord, [1923] 2 K. B. 432.

136. *Add. Annotation :* —**Refd.** Ord *v.* Ord (1923), 92 L. J. K. B. 859.

144. *Add. Annotation :*—**Consd.** Fishwick *v.* Gyani, [1925] 1 K. B. 617.

145. *Add. Annotation :*—**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180.

153a. —— ——.]—In the ordinary case of possible controversy between parties, but where no specific right has been asserted & no claim formulated, it is not open to one of the parties, because he apprehends a claim against him, to serve a writ or other process upon the other party in order to obtain a determination that such claim cannot be made.

Where the sole exor. under a will never made any claim against the beneficiaries for repayment of certain costs which he had been ordered to pay to them, all he did having been to reserve his right to claim such repayment under a deed of indemnity that the beneficiaries had executed in his favour :—*Held :* the ct. had no jurisdiction to make a declaratory judgment under R. S. C., Ord. 25, r. 5, & Ord. 54A, r. 1, on the application of the beneficiaries, their duty being to wait until they were attacked & then to raise their defence.—*Re* CLAY, CLAY *v.* BOOTH, *Re* A DEED OF INDEMNITY, [1919] 1 Ch. 66; 88 L. J. Ch. 40; 119 L. T. 754; 63 Sol. Jo. 23, C. A.

Declaratory judgments generally, *see* JUDGMENTS.

176. *Add. Annotation :*—**Refd.** Aksionairnoye Obschestvo, A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

179. *Add. Annotation :*—**Mentd.** Gill *v.* Carson (1917), 25 Cox, C. C. 774.

180. *Add. Annotation :*—**Mentd.** Hemmings *v.* Stoke Poges Golf Club, [1920] 1 K. B. 720.

PART I. SECT. 2, SUB-SECT. 1.

104 ii. —— ——.]—The expression "a cause of action" in Supreme Ct. Act, 1913 (No. 2733), s. 141, means the particular act or omission occasioning the injury complained of, & so giving rise to pltf.'s claim, not every fact material to be proved in order to entitle pltf. to succeed.—CHUBZA *v.* BUCKLAND, [1920] V. L. R. 558.—**AUS.**

104 iii. —— ——.]—The "cause of [illegible]" in District Cts. Act, R. S. S., [illegible] 10), s. 29, means the whole [illegible] action, including every [illegible] which pltf. must allege [illegible] him a right to judg- [illegible] a d[illegible] e if the whole cause of one jud[illegible]ct. [illegible]ion did not arise in be brought [illegible] the action should or one of [illegible] that district where deft. carries on busi[illegible]ness, resides or sect. 2, sub-sect. [illegible]. Notwithstanding [illegible] of the Act, Act provides that in the Act, unless something in the subject or context is repugnant thereto the expressions "cause" & "action" shall respectively have the same meaning as the same expressions have in King's Bench Act, the words "the cause of action" in sect. 29 should not be construed in the same way as in King's Bench Act, s. 35, because in sect. 29 "there is something in the subject or context repugnant thereto," namely, the fact that sect. 29 confers jurisdiction on an inferior ct. & therefore must be strictly construed, jurisdiction not being assumed beyond what is clearly conferred, whereas a different principle applies in sect. 35 which does not affect to deal with jurisdiction but simply deals with practice & procedure in a superior ct.—HOWELL *v.* WARNER, [1921] 3 W. W. R. 587.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—A.

si. *Sale of goods—To be delivered at place named—Payment to be made elsewhere.*]—Deft., in Perth, gave to B., who was agent for pltf., a written order for certain goods at a price. This order B. transmitted to his principal in Melbourne, who declined it, but authorised B. to inform deft. that pltf. would accept the order at increased prices, added in ink on the original order. These new prices were subsequently submitted by B. to deft., who agreed to take certain of the good at the increased prices. By the contract the goods were to be delivered f.o.b. Melbourne, payment to be by draft payable at Perth, cost of exchange to be added. Pltf. shipped the goods to deft. in Perth, who refused to accept the draft, alleging inferiority of the goods :—*Held :* the contract was made in Perth; & the only breach of the contract took place in Perth; & although delivery had to be made at Melbourne, there was not a cause [illegible] arising within Victoria.—[illegible]—A. RABECKLER, [1920] V. L. R. [illegible].

sg. —— ——.]—A "cause of action" on a [illegible] ——.]—A "cause of action" includes the contract & its breach. If a purchaser of me[illegible] & its breach. If pay the purchase pr[illegible]ery promises to at M., but signs the [illegible] to the vendor receives the machinery [illegible]rement & vendor's cause of action for W. the pur-chaser's failure to pay cannot be said to arise at M.—WESTERN CANADA AUTO TRACTOR CO., LTD. *v.* BJARNASON, [1920] 1 W. W. R. 621.—**CAN.**

sk. —— ——.]—Pltf. sold & delivered a motor car to deft. at Prince Albert, & deft. gave lien notes therefor signed at Prince Albert but payable at Saskatoon :—*Held :* the suit for balance due thereon was properly entered in the Saskatoon judicial district as the "cause of action" arose there.—OLMSTEAD *v.* SCOTT, [1921] 1 W. W. R. 1033.—**CAN.**

si. *Contract—Where act or omission giving cause of complaint occurs.*]—A "cause of action" as applied to actions in the Ct. of King's Bench & for the purposes of King's Bench Act, R. S. S., 1920 (c. 39), s. 35, arises where, with regard to a contract, the act or omission of deft. occurs which gives pltf. his cause of complaint, although the term may have a different construction in cases involving the local jurisdiction of inferior cts.—ST. LOUIS RURAL MUNICIPALITY *v.* MARKHAM, [1921] 1 W. W. R. 950.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.—B.

141 ii. —— ——.]—Though deft. on conviction for a common assault, instead of being fined or imprisoned, was merely bound over to keep the peace, under the magistrates' powers under Criminal Code, s. 748 :—*Held :* deft. was under s. 734 of the Code released from any subsequent civil proceedings for the same cause.—TAISKA *v.* DUCKA, [1924] 3 D. L. R. 638; 2 W. W. R. 1177; 20 Alta. L. R. 493.—**CAN.**

Part II.—In respect of what Acts and Omissions an Action will Lie.

187. *Add. Annotations :-* **Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Distd.** Everett *v.* Ryder (1926), 135 L. T. 302. **Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956; Simmonds *v.* Newport Abercarn Black Vein Steam Coal Co., [1921] 1 K. B. 616; Manton *v.* Brocklebank, [1923] 2 K. B. 212.

191. *Add. Annotations :*—**Refd.** Manton *v.* Brocklebank, [1923] 1 K. B. 406. **Mentd.** Butterworth *v.* Butterworth & Englefield, Collins *v.* Collins & Harrison, Barratt *v.* Barratt & Fox, Howell *v.* Howell & Walker, Adams *v.* Adams & Ward, Ellworthy *v.* Ellworthy & Ledgard, [1920] P. 126.

193. *Annotation :* **Refd.** Manton *v.* Brocklebank, [1923] 1 K. B. 406.

194. *Add. Annotations :*—**Consd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626. **Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316. **Mentd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623.

197. *Add. Annotation :* **Apld.** R. *v.* Poplar B. C. (No. 1), [1922] 1 K. B. 72.

198. *Add. Annotations :*—**Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254; Layzell *v.* Thompson (1926), 43 T. L. R. 58.

205. *Add. Annotations :*—**Folld.** Janvier *v.* Sweeney, [1919] 2 K. B. 316. **Consd.** Hambrook *v.* Stokes (1921), 41 T. L. R. 125. **Refd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

205a. Injury to health caused by false statement.] —The wilful making of a false statement with the knowledge that it is calculated to cause injury to the health of the person to whom it is made constitutes a good cause of action, if in fact such injury is thereby caused.—JANVIER *v.* SWEENEY, [1919] 2 K. B. 316; 88 L. J. K. B. 1231; 121 L. T. 179; 35 T. L. R. 360; 63 Sol. Jo. 430, C. A.

Annotation :—**Consd.** Hambrook *v.* Stokes, [1925] 1 K. B. 141.

205b. Mental shock caused by negligence.] —Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife :—*Held :* pltf. would establish a cause of action if he established that the death of his wife resulted from the shock occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—HAMBROOK *v.* STOKES BROTHERS, [1925] 1 K. B. 141; 94 L. J. K. B. 435; 132 L. T. 707; 41 T. L. R. 125, C. A.

215. *Add. Annotations :* **Refd.** Turpin *v.* Victoria Palace, [1918] 2 K. B. 530; Neville *v.* London "Express" Newspaper, [1919] A. C. 368; Wilson *v.* United Counties Bank, [1920] A. C. 102. **Mentd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.

217. *Add. Annotation :* **Consd.** Neville *v.* London "Express" Newspaper Ltd., [1919] A. C. 368.

223. *Add. Annotations :* **Mentd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Said *v.* Butt, [1920] 3 K. B. 497.

224. *Add. Annotations :*—**Refd.** Boyuton *v.* Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Kennard *v.* Cory, [1922] 1 Ch. 265; Huyton & Roby Gas Co. *v.* Liverpool Corpn., [1926] 1 K. B. 146.

231. *Annotation :* **Distd.** The Zelo, [1922] P. 9.

232. *Add. Annotations :* **Mentd.** Weinberger *v.* Inglis, [1919] A. C. 606; R. *v.* Housing Appeal Tribunal, [1920] 3 K. B. 334; R. *v.* Leman Street Police Station, Inspector, *Ex p.* Vinicoff, R. *v.* Secretary of State for Home Affairs, *Ex p.* Sano (1920), 89 L. J. K. B. 1200.

235. *Add. Annotation :*—**Apld.** Sorrell *v.* Smith, [1925] A. C. 700.

238. *Add. Annotations :*—**Mentd.** Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841; Layzell *v.* Thompson (1926), 43 T. L. R. 58.

239. *Add. Annotation :* **Refd.** Everett *v.* Griffiths, [1920] 3 K. B. 163.

240. *Add. Annotation :*—**Refd.** Ilford U. D. C. *v.* Beal, [1925] 1 K. B. 671.

241. *Add. Annotation :*—**Refd.** Valentine *v.* Hyde, [1919] 2 Ch. 129; Sorrell *v.* Smith, [1925] A. C. 700.

242. *Add. Annotations :*—**Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40.

246. *Add. Annotations :* —**Consd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254. **Refd.** Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841. **Mentd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

247. *Add. Annotation :*—**Refd.** Goddard *v.* Watford Co-op. Soc. (1924), 41 R. P. C. 218.

248. *Add. Annotation :*—**Mentd.** Hemmings *v.* Stoke Poges Golf Club, [1920] 1 K. B. 720.

249. *Add. Annotations :*—**Consd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Valentine *v.* Hyde, [1919] 2 Ch. 129; Ware & De

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PART II. SECT. 3, SUB-SECT. 1.

237 ill. ——.]—Pltfs. complained that defts. dug holes in the beach upon their lands on the shore of a lake, where the sand met the grass-covered bank, that sand swept from pltfs.' lands by storms was carried by the wind across defts.' beach, & came to rest in these holes, & that, when the next storm came, the sand remained in the holes & was not blown back to pltfs.' lands. Pltfs. contended that it was wrongfully detained by defts. :—*Held :* pltfs. had no cause of action, as the sand could not be considered a chattel upon its severance by the wind from its original situs, if shifting sand could be said to have a situs.—BREMNER *v.* BLEAKLEY, [1924] 2 D. L. R. 202; 54 O. L. R. 233; *revsd.*, [1923] 2 D. L. R. 576; 52 O. L. R. 124.—CAN.

Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40; Sorrell *v.* Smith, [1924] 1 Ch. 506. **Apld.** Reynolds *v.* Shipping Federation, [1921] 1 Ch. 28; Thompson *v.* British Medical Assocn. (N.S.W. Branch), [1924] A. C. 764. **Apld.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** Evans *v.* Heathcote, [1918] 1 K. B. 418; Thomas *v.* Moore, [1918] 1 K. B. 555; Davies *v.* Thomas, [1920] 2 Ch. 189; Rawlings *v.* General Trading Co., [1921] 1 K. B. 635; Brimelow *v.* Casson, [1924] 1 Ch. 302; British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383. **Mentd.** Montefiore *v.* Menday Motor Components Co., [1918] 2 K. B. 241; *Re* Wallace, Champion *v.* Wallace, [1920] 2 Ch. 274.

249a. — — — **Unlawful means used.**]—A single person or a body of persons commits an actionable wrong if he or they inflict actual pecuniary damage upon another by the intentional employment of unlawful means, such as threats of coercive action, to injure that person's business, even though the unlawful means may not comprise any specific act which is *per se* actionable & actual malice is not proved. The element of conspiracy in a case of this kind is of importance only in considering the weight of the acts alleged & the extent of the damage resulting therefrom.

Defts., the British Medical Association, a body incorporated for the purpose of maintaining "the honour & interests of the medical profession," & other defts., who were members of the Association, instituted & pursued a system of professional & social ostracism or boycott against pltfs., who were medical men, by means of threats & widely extended coercive action. Defts. sought to justify the boycott on the ground that the conduct of pltfs. in acting as the medical officers of a certain medical dispensary was detrimental to the honour & interests of the profession. As a result of the boycott pltfs. suffered pecuniary loss in the exercise of their profession:—*Held:* pltfs. had a good cause of action against all defts. for damages.—PRATT *v.* BRITISH MEDICAL ASSOCN., [1919] 1 K. B. 244; 88 L. J. K. B. 628; 120 L. T. 41; 35 T. L. R. 14; 63 Sol. Jo. 84.

Annotations:—**Consd.** Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40. **Refd.** Valentine *v.* Hyde, [1919] 2 Ch. 129; Davies *v.* Thomas, [1920] 1 Ch. 217; Hodges *v.* Webb, [1920] 2 Ch. 70; Saul *v.* Batt, [1920] 3 K. B. 497; Sorrell *v.* Smith, [1925] A. C. 700. **Mentd.** British Ry. Traffic & Electric Co. *v.* C. R. C. Co. & L. C. C., [1922] 2 K. B. 260.

250. *Annotations:*—**Consd.** Valentine *v.* Hyde, [1919] 2 Ch. 129. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40.

251. *Add. Annotation:*—**Refd.** Spalding *v.* Gamage (1918), 35 R. P. C. 101.

253. *Add. Annotations:* **Consd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Valentine *v.* Hyde, [1919] 2 Ch. 129. **Apld.** Davies *v.* Thomas, [1920] 2 Ch. 189. **Consd.** Hodges *v.* Webb, [1920] 2 Ch. 70; Ware & De Freville *v.* Motor Trade Asssocn., [1921] 3 K. B. 40; White *v.* Riley, [1921] 1 Ch. 1; Sorrell *v.* Smith, [1923] 2 Ch. 32. **Apld.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** Wolstenholme *v.* Ariss, [1920] 2 Ch. 403; Sorrell *v.* Smith, [1924] 1 Ch. 506.

255. *Annotation:*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

256. *Add. Annotations:*—**Distd.** The Zelo, [1922] P. 9. **Apld.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42. **Consd.** McColl *v.* Canadian Pacific Ry., [1923] A. C. 126. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127.

257a. ——.]—A number of discharged sailors entered into a partnership according to the terms of which the sailors were to perform together at certain music halls & were not to appear during the terms of the partnership in any other theatre or music hall. Pltfs., who were members of the co., complained that the deft. had induced certain of the sailors to break the contract by promising to get them employment & by obtaining other engagements for them. By amendment it was further alleged that deft. had wrongfully continued persons in her employment with the knowledge that by being in her employment those persons were breaking a contract with pltfs.:—*Held:* assuming an action lies to recover damages on the latter ground, the foundation of this action is that there shall be notice to deft. of a subsisting contract which one party, at all events, is still willing & able to perform; & there being sufficient evidence before the county ct. judge that the partnership had for all practical purposes come to an end, no action lay.—LONG *v.* SMITHSON (1918), 88 L. J. K. B. 223; 118 L. T. 678; 62 Sol. Jo. 472, D. C.

Annotation:—**Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

258. *Annotations:* **Refd.** Stearn *v.* Prentice, [1919] 1 K. B. 394; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

259a. — — **Damage by rats.**]—A firm of artificial manure manufacturers had on their premises, for the purposes of their business, a heap of bones which attracted rats. The occupier of adjoining premises was a farmer. The rats made runs between the factory & the fields & entered the farmer's land, & damaged his crops. The business had been carried on for at least thirty years, & there was no evidence to show that the bone heap had been increased beyond what it had been in past years, or anything to show that an increase which had actually taken place in the numbers of the rats was due to anything done by the manufacturers. In an action by the farmer against the manufacturers:—*Held:* in the absence of evidence showing that there had been an unusual & excessive collection of bones on the factory premises, or of anything unusual or excessive done by defts., or of any duty neglected by defts., pltf. could not maintain an action for damages.—

PART II. SECT. 3, SUB-SECT. 2.—B.

253 a. ——.]—If a person who, by virtue of his position or influence, has power to carry out his design, attempts, without justification, to prevent, & succeeds in preventing by threats to or special influence upon a workman's employers, or would be employers, such workman from obtaining or holding employment in his calling, & such workman suffers damage thereby, then that person is liable to the workman for such damage.—THOMPSON *v.* RYALL & CUNNINGHAM, [1924] 4 D. L. R. 778; 3 W. W. R. 524.—**CAN.**

257 f. ——.]—Where a workman who has been suspended by his employers suffers damage as a result of two or more persons conspiring without justification, to induce the employers not to reinstate him, he has a right of action against them.—THOMPSON *v.* RYALL & CUNNINGHAM, [1924] 4 D. L. R. 778; 3 W. W. R. 524.—**CAN.**

STEARN v. PRENTICE BROTHERS, LTD., [1919] 1 K. B. 394; 88 L. J. K. B. 422; 120 L. T. 445; 35 T. L. R. 207; 63 Sol. Jo. 229; 17 L. G. R. 142. D. C.

261. *Add. Annotation :*—**Refd.** Ware & De Freville v. Motor Trade Assocn., [1921] 3 K. B. 40.

262. *Add. Annotations :*—**Apld.** The Molière (1924), 41 T. L. R. 154. **Refd.** Kent v. Atkinson, [1923] P. 142.

263. *Add. Annotation :*—**Refd.** Kent v. Atkinson, [1923] P. 142.

264. *Add. Annotations :*—**Refd.** Barnett v. Cohen, [1921] 2 K. B. 461; Kent v. Atkinson, [1923] P. 142.

265. *Add. Annotations :*—**Refd.** Nunan v. Southern Ry., [1924] 1 K. B. 223. **Mentd.** Flannagan v. Shaw, [1920] 3 K. B. 96; Starr Estate Co. v. Blackpool Corpn. (1920), 19 L. G. R. 9; Nicolle v. Nicolle, [1922] 1 A. C. 281; Harper v. Hedges, [1923] 2 K. B. 314; Parry v. Harding (1924), 88 J. P. 191; Venn v. Tedesco, [1926] 2 K. B. 227.

266. *Add. Annotations :* **Consd.** Bradford Corpn. v. Webster, [1920] 2 K. B. 135. **Apld.** The Molière (1924), 41 T. L. R. 154. **Refd.** Baker v. Dalgleish S.S. Co., [1922] 1 K. B. 36.

268. *Annotation :*—**Consd.** Weld-Blundell v. Stephens, [1919] 1 K. B. 520.

270. *Add. Annotation :*—**Mentd.** Pryce v. Pioneer Press (1925), 42 T. L. R. 20.

296. *Annotation :*—**Apld.** Webster v. Harrison, Townsend (1920), 89 L. J. K. B. 1077.

304. *Add. Annotation :*—**Refd.** Everett v. Ryder (1920), 135 L. T. 302.

310. *Annotation :*—**Refd.** A.-G. v. Sewell (1918), 88 L. J. K. B. 425.

320. *Add. Annotation :* **Mentd.** *Re* Engelbach's Estate, Tibbetts v. Engelbach, [1924] 2 Ch. 348.

326. *Add. Annotations :* **Apld.** Wild v. Simpson, [1919] 2 K. B. 544. **Consd.** Lipton v. Powell, [1921] 2 K. B. 51.

328. *Add. Annotation :* **Refd.** British Oxygen Co. v. Liquid Air, [1925] Ch. 383.

332. *Add. Annotation :* **Refd.** Weld-Blundell v. Stephens, [1920] A. C. 956.

333. *Add. Annotation :* **Refd.** Weld-Blundell v. Stephens, [1920] A. C. 956.

Part III.—Who may Sue and be Sued.

340. *Add. Annotations :*—**Refd.** The Coaster (1922), 91 L. J. P. 115. **Mentd.** Edwards v. Motor Union Insce., [1922] 2 K. B. 249; Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127; McColl v. Canadian Pacific Ry. [1923] A. C. 126.

345. *Add. Annotation :* **Mentd.** Johnson v. Stephens & Carter & Golding, [1923] 2 K. B. 857.

354. *Add. Annotation :*—**Refd.** Soviet Republics Union v. Belaiew (1925), 42 T. L. R. 21.

360. *Add. Annotations :*—**Refd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456. **Mentd.** Commonwealth Shipping Representative v. P. & O. Branch Service, [1923] A. C. 191.

360a. Recognised, if acknowledged here.]—Where a revolution has taken place in a foreign country & the new Govt. has been recognised as the *de jure* Sovereign of that country by our Govt., that new Govt. is entitled to the possession & custody in England of records & State archives deposited here before the revolution by the old Govt.—SOVIET SOCIALIST REPUBLICS UNION v. OSOU (1925), 69 Sol. Jo. 676.

362. *Add. Annotation :*—**Mentd.** Slack v. Leeds Industrial Co-op. Soc., [1923] 1 Ch. 431.

363. *Add. Annotation :*—**Refd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Soviet Republics Union v. Belaiew (1925), 42 T. L. R. 21.

366a. —— Action by procurator—Validity of appointment.]—Pltf., the Spanish ambassador, brought an action, as procurator for all the King of Spain's subjects, to recover two ships & other goods seized by deft.:—*Held :* (1) no man can make a procurator for another; therefore the King could not make a procurator for all or any of his subjects; (2) the office of ambassador did not include a procuration private, but public for the King, nor for any several subject, otherwise than as it concerned the King. ACCSA v. BINGLEY (1616), Hob. 78, 113; 80 E. R. 263. *Annotations :*—*As to* (2) **Consd.** Bullett v. Spain (1828), 2 Bli. N. S. 31. **Folld.** Penedo v. Johnson (1873), 22 W. R. 103. *Generally*, **Refd.** Brunswick v. Hanover (1844), 13 L. J. Ch. 107. **Mentd.** Radley v. Eggleshfield (1670), 2 Saund. 259; The Hercules (1819), 2 Dods. 353.

366b. —— Claim under unregistered bill of sale.]—To a bill filed by the Chargé d' Affaires of the Brazilian Govt. in this country, in his own name, to restrain judgment creditors from issuing execution against certain furniture, etc., upon which a sum of money had been advanced, as was alleged, by the Brazilian Govt. secured by an unregistered bill of sale of the furniture, etc., a demurrer on the ground that the minister could not sue in his own name was allowed. PENEDO (BARON) v. JOHNSON (1873), 29 L. T. 452; 22 W. R. 103.

368. *Annotation :*—**Consd.** Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385.

372. *Add. Annotation :* **Refd.** Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

375. *Annotations :* **Refd.** The Tervaete (1922), 128 L. T. 176; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

376. *Add. Annotation :*—*As to* (2) **Folld.** Soviet Republics Union v. Belaiew (1925), 42 T. L. R. 21.

376a. —— —— ——] A foreign Sovereign suing in the cts. of this country submits to the jurisdiction to the extent only that he must give discovery, & cross proceedings in mitigation of the relief claimed by him can be taken against him.

A foreign State sued to restrain dealing with, & for the appointment of a new trustee

of, funds lodged in England in the names of a trustee for pltfs. & a trustee for defts. who held a concession from pltfs. for the construction of a railway in their territory. A counterclaim for damages in respect of alleged breaches of the terms of the concession was struck out. SOUTH AFRICAN REPUBLIC *v.* COMPAGNIE FRANCO-BELGE DU CHEMIN DE FER DU NORD, [1898] 1 Ch. 190; 77 L. T. 555; 46 W. R. 151; 14 T. L. R. 65; 42 Sol. Jo. 66.

Annotations:- **Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Reld.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Tervaete, [1922] P. 259; Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

376b. —— ——.]—In 1916 a Russian Govt. Committee, of which deft. was a member, was set up in London by the Imperial Russian Govt. & continued by its successor, the Russian Provisional Govt., & the committee, which incurred large financial obligations, had possession of certain documents, which related to those obligations & were the property of those Govts. The committee ceased to operate in 1918, & the documents were handed over to a board of trustees appointed by the Chargé d'Affaires of the Russian Provincial Govt., & deft. became president of the board. The documents had become the property of pltfs., the present Russian Govt., whose sovereignty had been recognised by the British Govt., but they were still in the possession of deft. Certain actions were pending against deft. as a member of the Russian Govt. Committee with regard to the transactions to which the documents related. Pltfs. claimed the delivery up of the documents, & deft. contended that he was entitled to a lien on the documents until he had received an indemnity in respect of the other actions, & he set up the contention by way of defence & counterclaim: *Held:* although where a sovereign state was a pltf. a counterclaim could be maintained against it, yet the counterclaim must be in respect of matters immediately connected with the claim, & as the indemnity sought by deft. was not in respect of any liability incurred by him in & about the custody of the documents, & was not in respect of matters immediately connected with the claim, the action succeeded & the counterclaim failed.—SOVIET REPUBLICS UNION *v.* BELAIEW (1925), 134 L. T. 64; 42 T. L. R. 21.

383. *Add. Annotation:*—**Reld.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

387. *Add. Annotations:*—**Consd.** Companía Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816. **Reld.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. *v.* Kelantan Government & Colonies Crown Agents (1922), 39 T. L. R. 96; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

387a. —— **Notwithstanding restrictions on exercise of sovereign rights.**]—(1) It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State; & the information so received is conclusive.

(2) A Govt. recognised as sovereign by His Majesty's Govt. is not the less exempt from the jurisdiction of our cts. because it has agreed to restrictions on the exercise of its sovereign rights.

By a deed dated in July, 1912, the Govt. of Kelantan granted to applt. co. certain mining & other rights to be exercised in that State, & the deed contained an arbn. clause, which incorporated Arbn. Act, 1889 (c. 49), so far as applicable. Disputes having arisen as to the effect of the deed, they were referred to an arbitrator, who made an award in favour of the co. & directed the Govt. to pay the costs of the arbn. In Dec. 1921, the Govt. applied to the Ch. Div., under Arbn. Act, 1889, s. 11, to set aside the award, but the application was refused. In June, 1922, the co. obtained from the K. B. Div., under sect. 12 of the Act, an order giving leave to enforce the award, but the order was set aside, on the application of the Govt., on the ground that Kelantan was a sovereign independent State. Before setting aside the order the master asked the Secretary of State for the Colonies for information as to the status of Kelantan, & received in reply an official letter stating that Kelantan was an independent State & its Sultan the sovereign ruler thereof, & that the King did not exercise or claim any rights of sovereignty over Kelantan, & enclosing an agreement regulating the relations between the Sultan & the King. By this agreement the Sultan agreed to have no political relations with any foreign power except through the medium of the King, & in all matters of administration, other than those touching the Mohammedan religion & Malay custom, to follow the advice of an adviser appointed by the King:—*Held:* (1) the statement in the letter as to the sovereignty of Kelantan & its rulers was not intended to be qualified by the terms of the agreement, & the letter was conclusive; (3) the Govt. of Kelantan had not submitted to the jurisdiction of the ct. for the purpose of the proceedings to enforce the award, either by assenting to the arbn. clause or by applying to the ct. to set aside the award.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

388. *Annotation:*—**Reld.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

389. *Add. Annotation:*—**Consd.** Soviet Republic Union *v.* Belaiew (1925), 42 T. L. R. 21.

390. *Add. Annotations:*—**Reld.** The Tervaete, [1922] P. 259; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385. **Mentd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 3 K. B. 532.

392. *Add. Annotations:*—**Reld.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 3 K. B. 532; The Tervaete, [1922] P. 259; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; The Jupiter (1924), 93 L. J. P. 156.

392a. —— ——.]—(1) In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown &, therefore,

conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.

In an arbn. in this country between pltf. co. & the Govt. of Kelantan an award was made in favour of the co. with costs. The Govt. of Kelantan then moved to set aside the award & this motion was dismissed with costs. An appeal from this decision was also dismissed with costs. No portion of these costs had been paid. The co. obtained a garnishee order *nisi* to attach money in the hands of the Crown agents of the Colonies on behalf of the Govt. of Kelantan. Upon an application by the co. for payment by the garnishees the Govt. of Kelantan & the Crown agents appeared together & contended that Kelantan was an independent sovereign State & the ct. had no jurisdiction to execute the orders for costs by a levy on the property of that State:—*Held:* (2) although the Govt. of Kelantan had, by initiating proceedings to set aside the award of the arbitrator, submitted to the jurisdiction of the ct., (3) that submission had not the effect of rendering liable to execution any property belonging to the Govt. within the jurisdiction. —DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.

393. *Add. Annotations:*—**Refd.** The Porto Alexandre (1919), 89 L. J. P. 97; Compania Mercantil Argentina *v.* United States Shipping Board (1921), 93 L. J. K. B. 816. **Mentd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

393a. ——————.]—A sovereign independent State does not, by entering into a trading contract with a foreigner, lose its immunity from process in foreign cts. as regards matters arising out of the contract; nor does a sovereign independent State, by making a submission to arbn. in a foreign country, lose its immunity from being impleaded in the cts. of the foreign country.—COMPANIA MERCANTIL ARGENTINA *v.* UNITED STATES SHIPPING BOARD (1924), 93 L. J. K. B. 816; 131 L. T. 388; 40 T. L. R. 601; 68 Sol. Jo. 666, C. A.

393b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 392a, *ante*.

393c. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 387a, *ante*.

394. *Add. Annotations:*—**Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandro, [1920] P. 30; Duff Development Co. *v.* Kelantan Government (1922), 39 T. L. R. 96; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816. **Mentd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 3 K. B. 532.

403. *Add. Annotation:*—*Generally*, **Refd.** Soviet Republics Union *v.* Belaiew (1925), 134 L. T. 64.

406. *Add. Annotations:*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. *v.* Kelantan Government (1922), 39 T. L. R. 96; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816.

407a. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 392a, *ante*.

407b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 387a, *ante*.

409. *Add. Annotations:*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

Part IV.—Conditions Precedent to Action.

413. *Add. Annotation:*—**Mentd.** R. *v.* Canadian N. Ry., [1923] A. C. 714.

425. *Add. Annotations:*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

428. *Add. Annotation:*—**Refd.** Bradford Old Bank, Ltd. *v.* Sutcliffe (1918), 34 T. L. R. 619.

430. *Add. Annotations:*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

434. *Add. Annotations:*—**Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833; Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

436. *Add. Citation:*—11 L. J. Q. B. 87.

448. *Add. Annotations:*—**Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833. **Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

461. *Add. Annotations:* **Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

462. *Add. Annotation:* *As to* (1) **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

463. *Add. Annotation:* **Consd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

480. Add "For full anns., *see* S. C., No. 170, *ante*."

Part V.—Suspension of Right of Action.

496. *Add. Annotation:*—**Refd.** Admiralty Comrs. *v.* S.S. Amerika, [1917] A. C. 38.

PART V. SECT. 4, SUB-SECT. 1.

498 ii. —— —— *Claim under Criminal Injuries Code of Ireland.*]—The rule or doctrine that no civil remedy will lie against the perpetrators of a felonious act until they have been prosecuted to conviction is not applicable to a claim for compensation under Criminal Injuries Code of Ireland for goods stolen in the course of rioting.—TYLER *v.* COUNTY COUNCIL, [1921] 2 I. R. 5.—IR.

499 i. ——————.]—A criminal charge

507. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* S.S. Amerika, [1917] A. C. 38.

516. *Add. Annotation :*—**Refd.** Canvey Island Comrs. *v.* Preedy (1921), 91 L. J. Ch. 203.

540. *Add. Annotations :*—**Refd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520; Samuel *v.* Dumas, [1924] A. C. 431; Pailin *v.* Northern Employers Mutual Indemnity Co., [1925] 2 K. B. 73.

Part VIII.—Maintenance and Champerty.

549. *Add. Annotations :*—**Expld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

551. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

552. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

556. *Add. Citation :* After "[1917] 2 K. B. 564, C. A." add "*On appeal*, [1919] A. C. 368, H. L.," & after "560" add "561a, 719a."

557. *Add. Annotation :* **Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

558. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

559. *Add. Annotations :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Refd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520; Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 36 T. L. R. 528.

560. For the existing paragraph substitute the following paragraph :—

"(1) The success of the maintained litigation, whether an action or a defence, is not a bar to the right of action for maintenance.

(2) An action for damages for maintenance will not lie in the absence of proof of special damage.—NEVILLE *v.* LONDON "EXPRESS" NEWSPAPER, LTD., [1919] A. C. 368; 88 L. J. K. B. 282; 120 L. T. 299; 35 T. L. R. 167; 63 Sol. Jo. 213, H. L.

Annotations : As to (2) **Folld.** Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 37 T. L. R. 163. *Generally*, **Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544; Ellis *v.* Torrington, [1920] 1 K. B. 399. **Mentd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

561. *Annotations : As to* (2) **Refd.** Mackey *v.* Monks (Preston), [1918] A. C. 59. *Generally*, **Mentd.** Turner *v.* Kingsbury Collieries, [1921] 3 K. B. 169.

561a. **Special damage—Necessity to prove.**]—NEVILLE *v.* LONDON "EXPRESS" NEWSPAPER, LTD., No. 560, *ante*.

561b. —— ——.]—Pltf., a member of deft. assocn., brought an action against C., the secretary, & W., the president, of the assocn., for libel in the conduct of the business of the assocn., & in the same action C. counterclaimed against pltf. for damages for libel in respect of the same business. The action resulted in judgment for defts. on the claim, with damages for £75 for C. on the counterclaim. The assocn. before the hearing of the action had passed resolutions to indemnify C. & W. against any liability or costs arising from the action against them, & that the indemnity should extend to the costs of any counterclaim that counsel might advise should be made, provided that any costs of the action for which the assocn. would be liable should be paid *pro tanto* out of any moneys recovered in the action. Pltf. then brought an action against the assocn. for maintenance & champerty, & other relief :—*Held :* (1) champerty being a form of maintenance, a decision which applies to the *genus* must also apply to the *species* : (2) pltf. had not proved any special damage, & his claim in champerty failed equally with his claim in maintenance.—HICKMAN *v.* KENT OR ROMNEY MARSH SHEEPBREEDERS' ASSOCN. (1920), as reported in 151 L. T. Jo. 5, C. A.

566. *Add. Annotation :* **Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

567. *Add. Annotation :*—**Mentd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

569. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

577. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

was laid by pltf. bank against deft. in respect of $1,800 which the bank alleged it had overpaid deft. Before decision in the criminal trial had been given, pltfs. instituted an action to recover the money. It was contended on behalf of deft. that immediately the evidence disclosed a criminal offence on the part of deft. which had not been prosecuted to conviction or acquittal, pltfs. should not have been allowed to proceed with the action, but should have been non-suited. *Held :* as a criminal prosecution had actually been carried through, even though the decision was under advisement, the action could be maintained.—STANDARD BANK OF CANADA *v.* SUTTON WAU, [1919] 1 W. W. R. 386, 26 B. C. R. 441.—**CAN.**

504 iii. ——.] The rule that where pltf. sues in respect of a wrong which is a tort & also a felony, deft. should be prosecuted in respect of the felony before the civil action is heard, does not make such criminal prosecution an indispensable condition precedent to the right to maintain the civil action. In its modern application the rule is merely suspensory of the civil rights, & is subject to the exercise of judicial discretion. In exercising such discretion the ct. may consider circumstances, such as the infancy, ignorance, or poverty of pltf., which may afford excuse for the failure to prosecute in respect of the felony. Where pltf. has obtained a verdict in the civil action, the ct., on motion for a new trial or for judgment, may consider the circumstance that between verdict & motion deft. has been prosecuted in respect of the felony.—CARUSETTE *v.* ORR (No. 2), [1918] 2 I. R. 412. **IR.**

504 iv. ——.] On Aug. 12, 1920, an information for theft was laid by defts. against pltf. On Aug. 23, 1920, pltf. began an action in a division ct. against defts. to recover $99 for wages; on Aug. 30, defts. counterclaimed in the division ct. action for money & tickets amounting to $202.74, "fraudulently & without colour of right" converted by pltf. to his own use, the subject of conversion being the same as that in respect of which the criminal charge was made: on Sept. 22 pltf. was committed for trial on the criminal charge, & on Sept. 30, a true bill was found against him in the sessions. On a subsequent day the judge of the division ct. heard argument as to whether the action should be proceeded with before the criminal charge was taken up: he decided that it should, & fixed a day for trial, but on Dec. 10, 1920, neither the action nor the criminal proceeding having been tried, an order was made by a judge of the Supreme Ct. of Ontario, upon the application of defts., prohibiting the judge of the division court from proceeding in the action until after the final disposition of the criminal prosecution. Pltf. appealed from this order, & before the completion of the argument of the appeal pltf. was tried upon the criminal charge & acquitted :—*Held :* the division ct. judge had the right, the claim & counterclaim being within the jurisdiction of the ct., to stay proceedings or otherwise deal with the case; & prohibition did not lie, even if the judge erred in the conclusion to which he came.—*Re* BRYANT *v.* CITY DAIRY CO. (1921), 64 D. L. R. 283; 37 Can. Crim. Cas. 405; 50 O. L. R. 40.—**CAN.**

583. *Add. Annotations :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

584a. Special damage—Necessity to prove.]—HICKMAN *v.* KENT OR ROMNEY MARSH SHEEP-BREEDERS' ASSOCN., No. 561b, *ante*.

585. *Add. Annotation :*—**Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

589. *Add. Annotation :*—**Refd.** Parkinson *v.* College of Ambulance & Harrison, [1925] 2 K. B. 1.

590. *Add. Annotations :*—**Apld.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

592. *Add. Annotation :*—**Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

594. *Add. Annotation :*—**Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

598a. —— —— **Percentage.**]—Pltf. was retained by deft. to act as his solr. in an action brought against him. Deft. had a counterclaim, &, while the action was proceeding, an agreement was made that in the event of deft.'s recovering more than sufficient to pay his creditors in full & all legal expenses he would pay his solr. a percentage on the amount, the solr. agreeing to conduct the counterclaim on the above terms, & not to look to deft. for any costs of the counterclaim except out-of-pocket expenses in the event of the success of pltf. in that action. Deft. lost the action, & his solr. sued him for the costs : *Held :* pltf. could not recover as (1) (BANKES, L.J.) the agreement was champertous, & its effect was to make it an essential part of pltf.'s cause of action on his original retainer that he should negative the event in which he was to get no costs, namely, the event of the success of pltf. in the previous action ; (2) (ATKIN, L.J.) the champertous nature of the agreement prevented pltf. from completing his services lawfully, & consequently he could not recover on a *quantum meruit*.—WILD *v.* SIMPSON, [1919] 2 K. B. 544 ; 88 L. J. K. B. 1085 ; 121 L. T. 326 ; 35 T. L. R. 576 ; 63 Sol. Jo. 625, C. A.

599a. — — — ——.]—Pltf. carried on business as the "Turf Register," which in a prospectus issued by him was called a "society" ; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amount recovered, he undertook to collect for the subscribers betting debts which, under the provisions of Gaming Acts, were not recoverable. It was agreed between him & deft. in the terms of the prospectus, that in consideration of pltf. "putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly is to be equally divided between claimant & the society." Pltf. brought an action to recover the amounts of debts alleged to have been wrongfully collected by deft. in breach of the agreement :—*Held :* the agreement was illegal & void, being contrary to public policy, & champertous, as there was no community of interest between the parties, except such as was created by the agreement itself, & pltf. could not recover.—FORD *v.* RADFORD (1920), 36 T. L. R. 658 ; 64 Sol. Jo. 571.

601. *Add. Annotations :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251 ; Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Ellis *v.* Torrington, [1920] 1 K. B. 399.

602. *Add. Annotations :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251 ; Ellis *v.* Torrington, [1920] 1 K. B. 399.

603. *Annotation : As to* (1) **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

604. *Annotation :* **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

604a. — — — — **Assignment of option to take lease.**]—In 1853 the L. & C. Ry. Co., the predecessors of deft. co., leased land adjacent to the station at Carlisle to H. for 999 years, for the purpose of erecting an hotel thereon. The lease contained a covenant by the co. with H., his exors., administrators & limited assigns that "the co. & their successors & assigns shall permit the tenant or occupier of the hotel for the time being & his servants to have access to the platforms of the station & that the tenant or occupier of the hotel shall have the option of renting the refreshment rooms" at a rent to be fixed as there mentioned, "in preference to any other party." In 1860 H. granted a sub-lease of the hotel premises to B. for 21 years, & the co. also granted to B. a lease of the refreshment rooms for 21 years. In 1866 pltf. co. obtained an assignment from B. of his interest under these two documents, & an assignment from H. of the land comprised in the lease of 1853 & "All & singular other premises comprised in & demised by the said recited indenture of lease of Aug. 1, 1853." From 1866 onwards pltfs. managed & conducted both hotel & refreshment rooms, & after the expiration of the 21 years' term granted by the sub-lease of 1860 to B., they continued in occupation of the rooms upon such terms of that sub-lease as were applicable. In 1870 defts. succeeded by statute to the contracts of the L. & C. Ry. Co. On April 2, 1891, defts. & the Caledonian Ry. Co. demised to pltfs. a plot of land adjacent to the hotel for 962 years. The deed recited the lease of 1853, & referred to it as the "principal indenture" ; & it also provided that "these presents are without prejudice to any of the covenants conditions & agreements contained in the principal indenture," which were to remain & be in full force. On Mar. 24, 1916, defts. gave six months' notice to pltfs. to determine their occupation of the refreshment rooms. Pltfs. gave up possession, & then served a written notice on defts.

PART VIII. SECT. 1, SUB-SECT. 3.

594 vii. — — —— ——.]—The English law of champerty is not in force in India & fair agreements to share property in litigation with others in consideration of their supplying the funds for carrying on suits are not opposed to public policy, & such agreements should receive effect except when extortionate or inequitable.—INDAR SINGH *v.* MUSAMI (1919), I. L. R. 1 Lah. 124.—**IND.**

594 viii. — —.] An agreement to contribute towards the costs of a law suit in consideration of receiving a share in the result of the suit :—*Held :* on the facts to be champertous.—FITZROY SMITH *v.* SHARPE (1925), 46 N. L. R. 168. **S. AF.**

PART VIII. SECT. 2, SUB SECT. 1.

601 ii. — *Payment of consideration dependent on success of action. Assignment void.*—FIRST MORTGAGE CO. *v.* NOTE, [1924] 4 D. L. R. 221. **CAN.**

stating their desire to exercise the option contained in the lease of 1853, & requesting to be informed as to terms. Defts. having ignored the notice, pltfs., on Oct. 16, 1916, obtained an express assignment from the personal representatives of H., who had died in 1876, of "all that the benefit right title & interest, if any, now remaining outstanding of or otherwise vested in them or any or either of them of & in the railway obligations." Pltfs. claimed (*a*) a declaration that defts. by the lease of 1853 were under an obligation to put & keep the occupier of pltfs.' hotel in occupation of the refreshment rooms, upon the terms of paying therefor a fixed market rent; (*b*) to have such rent fixed under the direction of the ct.; (*c*) damages for the breach of such obligation by defts.:—*Held:* (1) the option clause did not run with the land, & pass *ipso facto* by the assignment of the lease of 1853, as it did not touch or concern the thing demised; (2) the option clause was assignable, & was not a covenant merely personal to the covenantee; (3) the benefit of this clause was not assigned by the deed of 1866, inasmuch as the word "premises" therein referred to the land & buildings demised, & not to the option clause; (4) the deed of 1891 was not a fresh grant of the option rights to pltfs., & did not constitute a binding recognition of pltfs. as the assignees of the option clause; (5) the assignment of Oct. 16, 1916, by the personal representatives of H., of the option clause in the lease of 1853, being an assignment of a right of property, was not invalid for champerty; (6) the option clause was void for uncertainty; (7) the option clause was *ultra vires* of the railway co., as it fettered injuriously & gravely their obligations of performing efficiently their public duties.—COUNTY HOTEL & WINE CO. *v.* LONDON & NORTH WESTERN RY. CO., [1918] 2 K. B. 251; 87 L. J. K. B. 849; 119 L. T. 38; 34 T. L. R. 393; 17 L. G. R. 274; *affd.* on other grounds, [1921] 1 A. C. 85, H. L.

607. *Add. Annotations:*—*As to* (1) **Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

615. *Annotation:*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

617. *Add. Annotations:*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Ellis *v.* Torrington, [1920] 1 K. B. 399.

617a. Lease of tithes—With covenant to take legal proceedings for recovery of tithes.]—Agreement to lease the rectorial tithes of a parish, including the tithes of ninety acres supposed to be within the parish, but which had not paid tithes to the lessor during his incumbency with a stipulation that the intended lessee would, within a given time, take such legal proceedings for the recovery of the tithes of the ninety acres as his counsel should advise:—*Held:* not to be within Statute of Maintenance, 1540 (c. 9).—WHITE *v.* GARDNER (1835), 1 Y. & C. Ex. 385; 160 E. R. 157.

621. *Add. Annotations:*—**Consd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251. **Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399.

621a. —— —— Dilapidations.]—A freehold messuage & tenement were the subject of the following leases: (*a*) a head lease which expired on Dec. 25, 1917; (*b*) an underlease which expired on Dec. 18, 1917; (*c*) a sub-underlease which expired on Dec. 15, 1917. All three leases contained onerous covenants to repair the premises & to keep them & yield them up in good repair. The sub-underlease became vested by assignment in deft. On Dec. 18, 1917, pltf. who had been a tenant to deft. of the same premises, & was liable to him under a covenant to repair less onerous than those in the three leases above mentioned, agreed to purchase, & on May 1, 1918, took a conveyance of the fee simple of the premises together with the benefit of the covenants in the head lease. At the expiration of all the leases the premises were out of repair & deft. was threatening pltf. with an action on his covenant. Thereupon pltf. obtained an assignment of the full benefit of the lessee's covenants to repair contained in the sub-underlease, & commenced an action against deft. as assignee of the sub-underlease for breaches of the lessee's covenants therein:—*Held:* the assignment was free from objection on the ground of maintenance or champerty, the right of action on the covenants being so connected with the enjoyment of property as to be more than a bare right to litigate.—ELLIS *v.* TORRINGTON, [1920] 1 K. B. 399; 89 L. J. K. B. 369; 122 L. T. 361; 36 T. L. R. 82, C. A.

Annotations:—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446. **Mentd.** Cole *v.* Kelly, [1920] 2 K. B. 106.

626. *Add. Annotation:*—*Generally*, **Mentd.** *Re* Jordison, Raine *v.* Jordison, [1922] 1 Ch. 440.

634. *Add. Annotation:*—**Consd.** Ellis *v.* Torrington, [1920] 1 K. B. 399.

635. *Add. Annotations:*—*As to* (1) **Refd.** Ellis *v.* Torrington, [1920] 1 K. B. 399. *As to* (2) **Consd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251. *Generally*, **Mentd.** *Re* Pain, Gustavson *v.* Haviland, [1919] 1 Ch. 38.

636. *Add. Annotations:*—**Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

637. *Add. Annotations:*—*As to* (1) **Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

637a. —— Actions for infringement of copyright—Society for protection of copyright interests of members.]—Pltf. society was formed as a limited co. to protect the copyright interests of members, who assigned their copyrights to the society. By the rules of the society fees & damages recovered were pooled, & the fund so formed was divided among the

PART VIII. SECT. 2, SUB-SECT. 4.

634 ii. — *Subject to litigation—Conveyance valid.*]—By reason of the erection of the Quinze Lake Dam, & the consequent raising of the level of the water in the lake, parts of certain properties in the neighbourhood were flooded. The Crown expropriated the right so to flood these properties including the one in question herein, which at the time of the expropriation belonged to V. Subsequently V. sold the property to H. together with V.'s right to recover the compensation from the Crown for all damages caused him by the flooding & expropriation. The Crown exhibited an information acknowledging liability & seeking to have the amount of the compensation fixed, & made H. deft.:—*Held:* the assignment from V. to H. was not an assignment of litigious rights.—R. *v.* HYE (1921), 21 Exch. C. R. 76.—CAN.

members after the deduction of expenses. The assignments were real & substantial transactions, & the provision as to the division of the damages was only subsidiary. In an action by the society for the infringement of copyrights which had been assigned to the society by two members :—*Held :* the arrangement between the society & its members was made for legitimate business reasons & was not champertous, & pltfs. were entitled to succeed.—PERFORMING RIGHTS SOCIETY, LTD. *v.* THOMPSON (1918), 34 T. L. R. 351.

637b. Assignment of judgment.]—In an action of assumpsit to pay money in consideration of the assignment of a judgment :—*Held :* this was good consideration & might be assigned without maintenance.—LODER *v.* CHESLEYN (1664), 1 Sid. 212 ; 82 E. R. 1063.

Annotations :—**Mentd.** Master *v.* Miller (1791), 4 Term Rep. 320 ; Price *v.* Seaman (1825), 7 Dow. & Ry. K. B. 14.

640. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

641. *Add. Annotation :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

642. *Add. Annotation :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

644. *Add. Annotations :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

645. *Add. Annotation :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

646. *Add. Annotations :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520 ; Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 36 T. L. R. 528.

648. *Add. Annotations :*—*As to* (1) **Apld.** Ford *v.* Radford (1920), 36 T. L. R. 658. *Generally*, **Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

655. *Add. Annotations :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

661. *Add. Annotations :*—**Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

665. *Add. Annotation :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

669. *Add. Annotations :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

671. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

679. *Add. Annotation :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

681 *Add. Annotation :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

683. *Add. Annotations :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520 ; Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 36 T. L. R. 528.

685. *Add. Annotations :*—*As to* (1) **Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

687. *Add. Annotation :*—*As to* (2) **Reld.** Wild *v.* Simpson, [1919] 2 K. B. 544.

692. *Add. Annotations :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

695. *Annotation :*—**Reld.** Wild *v.* Simpson, [1919] 2 K. B. 544.

696. *Add. Annotation :*—**Reld.** Wild *v.* Simpson, [1919] 2 K. B. 544.

699. *Add. Annotation :*—*As to* (2) **Reld.** Wild *v.* Simpson, [1919] 2 K. B. 544.

702. *Add. Annotation :*—**Reld.** Wild *v.* Simpson, [1919] 2 K. B. 544.

707. *Annotation :*—**Mentd.** *Re* A Solicitor (No. 2) (1921), 93 L. J. K. B. 761.

716. *Add. Annotation :* **Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

719. *Add. Annotation :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

719a. —— Necessity of proving special damage.]—NEVILLE *v.* LONDON "EXPRESS" NEWSPAPER, LTD., No. 560, *ante*.

720. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

725. This paragraph was in effect reversed by the House of Lords, *see* NEVILLE *v.* LONDON "EXPRESS" NEWSPAPER, LTD., No. 560, *ante*.

726. *Annotation :*—**Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

731. *Add. Annotations :*—**Apld.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Reld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

PART VIII. SECT. 4, SUB-SECT. 2.—A.

695 III. —— —— *Legal Professions Act*, 1911 (c. 136), s. 37.)—An agreement between pltf. & deft. made under the above sect., as to payment for deft.'s services as solr., was rescinded on the ground that the provincial statute authorising such an agreement was *ultra vires*.—TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 926 ; 3 W. W. R. 97 ; 34 B. C. R. 56 ; *affd.*, [1924] 1 D. L. R. 877 ; 1 W. W. R. 859 ; 33 B. C. R. 383. **CAN.**

ADMIRALTY.

Part I.—Origin and General Characteristics of the Jurisdiction of the Admiralty Division of the High Court of Justice.

1. *Add. Annotation :* **Consd.** The Fagernes, [1926] P. 185.

25. *Citations :* For "THE LORD COCHRANE" read "DUNCAN *v.* M'CALMONT."

36. *Add. Annotation :* **Mentd.** The Regina d'Italia, [1925] P. 123.

37. *Add. Annotation :* **Mentd.** The Sheaf Brook, [1926] P. 61.

41. *Add. Annotations :*—**Refd.** Ellerman Lines *v.* Grayson, [1919] 2 K. B. 514; Admiralty Comrs. *v.* S.S. Volute, [1922] 1 A. C. 129.

46. *Add. Annotation :* **Refd.** The Fagernes, [1926] P. 185.

51. *Add. Annotation :* **Mentd.** The Koursk, [1924] P. 140.

53. *Add. Annotation :* **Mentd.** The Rosalind (1920), 90 L. J. P. 126.

56. *Add. Annotation :* **Mentd.** The Mogileff, [1921] P. 236.

65. *Add. Annotations :* **Mentd.** The Mogileff, [1921] P. 236; The Ambaticlos, The Cephalonia, [1923] P. 68.

66. *Add. Annotations :* **Refd.** The Llandovery Castle, [1920] P. 110; The Jupiter, [1924] P. 236.

70. *Add. Annotations :* **Consd.** The St. George, [1926] P. 217. **Refd.** The Tervaete, [1922] P. 259; The Colorado, [1923] P. 102; The Sylvan Arrow, [1923] P. 220. **Mentd.** Pocahontas Fuel Co. *v.* Ambaticlos (1922), 27 Com. Cas. 118.

82a. [illegible] THE TYRANTIA, No. 594b, *post*.

87a. [illegible]—*Held :* barges, fitted with rudders & not propelled by oars, were "ships" within M. S. Act, 1894 (c. 60), ss. 503, 742.—THE HARLOW, [1922] P. 175; 91 L. J. P. 119; 126 L. T. 763; 38 T. L. R. 375; 15 Asp. M. L. C. 498.

Annotations :—**Consd.** Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 721. **Mentd.** The Alde, [1926] P. 211.

89. *Add. Annotations :*—*As to* (1) **Apld.** The Harlow, [1922] P. 175. **Distd.** Merchants' Marine Insce. *v* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724.

125. *Add. Annotations :*—**Refd.** The Fagernes, [1926] P. 185. **Mentd.** Johnstone *v.* Pedlar (1921), 90 L. J. P. C. 181.

126. *Add. Annotation :* **Refd.** The Fagernes, [1926] P. 185.

130. *Add. Annotation :* **Apld.** The Porto Alexandre (1919), 89 L. J. P. 97.

130a. **Yacht authorised to fly White Ensign.**]—By the Dockyard Port of Dover Order in Council of June 10, 1912, Sched. 1, reg. 9, all vessels other than His Majesty's ships are forbidden to use the eastern entrance to the Admlty. Harbour between one hour after sunset & one hour before sunrise, without the special authority of the King's Harbour Master. While using the entrance during the prohibited hours without the authority of the King's Harbour Master pltf.'s yacht ran upon a wreck, which was said to have been unlighted at the time :—*Held :* the fact that a yacht of the Royal Yacht Squadron is authorised to fly the White Ensign does not confer upon her the status of one of His Majesty's ships within reg. 9.—H.M.S. GLATTON, [1923] P. 215; 93 L. J. P. 12; 39 T. L. R. 690.

131. *Add. Annotations :*—**Apld.** The Crimdon

PART I. SECT. 4. SUB-SECT. 1.

sa. *Equitable jurisdiction.*]—M. obtained judgment for wages, etc., against the A., the owners having made default to appear. D. & Co., the owners of the cargo, intervened. The vessel was duly seized, sold at auction by the sheriff, & purchased by D. & Co., who made the necessary deposit. Money had been wired by appt. to discharge pltf.'s claim, but arrived too late to stop the sale. D. & Co. afterwards tendered the balance of the price, which was refused on account of an application to set aside the sale, & to redeem the vessel. D. & Co., on purchasing the vessel, made arrangements for repairs thereto, & at the time the application was originally made, they were negotiating for the sale thereof. The application was refused :—*Held :* while the Admlty. Ct. exercised an unquestionable equitable jurisdiction, inasmuch as appt. had failed to show a superior equity to those arising in favour of the purchasers, the order refusing the application should not be interfered with.—MCBRIDE *v.* DARRELL (1920), 20 Exch. C. R. 274.—CAN.

PART I. SECT. 5.

sb. *Action in rem—Tort committed by master—Recovery of damages.*]—No maritime lien attaches in the case of an assault by the captain on a seaman on board ship, & an action *in rem* does not lie against the vessel to recover damages due to such assault.—LOUTHOOD *v.* THE SCHOONER CALLMERIS (1921), 69 D. L. R. 138; 20 Exch. C. R. 331.—CAN.

sc.—[illegible]] If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tortfeasor or his goods, & to try an action based upon the tort; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—NOLAN *v.* S.S. RUSSEL HAVERSIDE, [1921] C. P. D. 136.—S. AF.

sd. *Master's claim for damages & interest on wages in arrear—Whether enforceable by action in rem.*]—A British ship was attached to satisfy various creditors *in rem*, including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale :—*Held :* (1) the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem*; (2) the master was not entitled to claim *in rem* for interest upon arrear wages.—*Re* GWYDYR CASTLE (1920), 41 N. L. R. 231.—S. AF.

PART I. SECT. 6, SUB-SECT. 1.—C.

sf. *Vessel built for show.*]—A vessel built for show & not for transportation is a "ship" within admlty. law & is subject to seizure for towage.—NEVILLE CANNERIES, LTD. *v.* SANTA MARIA (1917), 16 Exch. C. R. 481; 36 D. L. R. 619.—CAN.

(1918), 35 T. L. R. 81. **Refd.** The Gagara, [1919] P. 95; The Porto Alexandre (1919), 89 L. J. P. 97; The Tervaete, [1922] P. 197; France Fenwick v. R. (1926), 43 T. L. R. 18.

131a. ——.]—A privately owned vessel used by a sovereign State for public purposes is immune from arrest in a collision action.—THE CRIMDON (1918), 35 T. L. R. 81.

Annotation : — **Consd.** The Porto Alexandre (1919), 89 L. J. P. 97.

134. *Add. Annotation :*—**Refd.** Pyman S.S. Co. v. Admiralty Comrs., [1919] 1 K. B. 49.

135. *Add. Annotation :*—**Refd.** The Tervaete, [1922] P. 197.

140. *Add. Annotations :*—**Apld.** The Crimdon, (1918), 35 T. L. R. 81; The Gagara, [1919] P. 95. **Folld.** The Porto Alexandre, [1920] P. 30. **Apld.** The Tervaete, [1922] P. 259. **Consd.** Compania Mercantil Argentina v. United States Shipping Board (1921), 93 L. J. K. B. 816. **Refd.** Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; The Jupiter (1923), 93 L. J. P. 156; The Sylvan Arrow, [1923] P. 220; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673; Duff Development Co. v. Kelantan Government, [1924] A. C. 797. **Mentd.** *Re* Suarez, Suarez v. Suarez, [1918] 1 Ch. 176; Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532; The Edna, [1921] 1 A. C. 735; The Mogileff (No. 2), [1922] P. 122.

141. *Add. Annotations :*—**Refd.** The Crimdon (1918), 35 T. L. R. 81; The Porto Alexandre (1919), 89 L. J. P. 97.

141a. ——.]—THE CRIMDON, No. 131a, *ante*.

141b. —— **Government not formally recognised.**]—Pltfs., Esthonian subjects, the owners of two sailing vessels, with the approval & support of the Esthonian Govt., issued writs *in rem* claiming possession of the vessels, which had been requisitioned or sequestered by the Provisional Govt. of Northern Russia, & by them hired to a partnership assocn. for the purposes of trading, subject to the control of the director of naval transports. The Provisional Govt. entered appearances under protest, & motions were set down to set aside the writs & all subsequent proceedings on the grounds (*inter alia*) that the vessels were in the service of the Provisional Govt. & therefore immune from arrest; & that the dispute was between foreigners as to the possession of foreign ships, & therefore that, even if the ct. had jurisdiction, it should decline to exercise it. The judge invited the assistance of the Foreign Office as to the status of the Provisional Govt. of Northern Russia, & was informed by the Secretary of State for Foreign Affairs that, while the Allied Powers were co-operating with the Provisional Govt. in the opposition which that Govt. was making to the forces of the Russian Soviet Govt., the Provisional Govt. had not been "formally recognised either by H.M. Govt. or by the Allied Powers as the Govt. of a sovereign independent State:— *Held :* (1) although under the control of an official of the Provisional Govt. the vessels were not in the possession or service of the Govt.; (2) even under the older decisions, the ct. in its discretion would entertain a possession suit between foreigners if the representative of the foreign State to which the vessel belonged requested the intervention of the ct.—THE ANNETTE, THE DORA, [1919] P. 105; 88 L. J. P. 107; 35 T. L. R. 288.

Annotations :—*As to* (2) **Refd.** The Jupiter, [1924] P. 236 The Jupiter (No. 2), [1925] P. 69. *Generally*, **Mentd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

141c. —— **Trading.**]—A vessel owned or requisitioned by a sovereign independent State & earning freight for the State, is not deprived of the privilege, decreed by international comity, of immunity from the process of arrest, by reason of the fact that she is being employed in ordinary trading voyages carrying cargoes for private individuals. THE PORTO ALEXANDRE, [1920] P. 30; 89 L. J. P. 97; 122 L. T. 661; 36 T. L. R. 66; 15 Asp. M. L. C. 1, C. A.

Annotations :—**Refd.** The Tervaete, [1922] P. 259 Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816.

141d. ——.]—While under requisition by, & manned & operated by, the United States Govt., defts.' steamship was in collision with & did damage to pltfs.' steamship. After the vessel had been released from requisition pltfs. commenced an action *in rem* for their collision damage. In that action defts. pleaded (*inter alia*) that "at the time when the collision is alleged to have taken place the *Sylvan Arrow* was under requisition by & under the sole control & management of the Govt. of the United States & was being navigated by persons who were the servants of the Govt. & for whose negligence defts. were & are in no wise responsible. . . . Defts. say that the action is not maintainable *in rem* by reason of the facts set out" above. On the hearing of this question as a preliminary point of law: *Held:* defts. had surrendered their vessel to the United States Govt. under compulsion; in no sense could it be said that the master & crew derived their authority from defts., & in the circumstances no maritime lien attached to the vessel by reason of the collision, & her owners were not, either through their vessel or otherwise, liable to pltfs.—THE SYLVAN ARROW, [1923] P. 220; 92 L. J. P. 119; 130 L. T. 157; 39 T. L. R. 655, 16 Asp. M. L. C. 211.

142. *Add. Annotations :* **Refd.** The Porto Alexandre (1919), 89 L. J. P. 97; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816. **Mentd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

142a. ——.]—THE PORTO ALEXANDRE, No. 141c, *ante*.

142b. ——.]—On a motion to set aside a writ *in*

PART I. SECT. 6, SUB-SECT. 3.—B.

141 i. *Ship requisitioned by foreign Government.*]—*Held:* not liable to arrest.—THE EOLO, [1918] 2 I. R. 78.—**IR.**

142 i. *Vessel of foreign Sovereign—Trading.*]—The *I.* was the property of the Govt. of Indo-China, a French possession, administered by a Governor-General for & in the name of the French Republic. Her officers & crew were in the service & pay of that Govt., & at the time of the accident she was on a voyage in the interest of the Govt. of Indo-China:—*Held:* the *I.* could not be lawfully arrested. *Semble:* a sovereign State cannot be impleaded indirectly by proceedings

rem claiming possession of a vessel in the possession of the Esthonian Govt. the ct. invited the assistance of the Foreign Office as to the status of the Esthonian National Council. The A.-G. on behalf of the Foreign Office stated that His Majesty's Govt. had, for the time being, & with all necessary reservations as to the future, recognised the Esthonian National Council as a *de facto* independent body & had received an informal diplomatic representative of the Provisional Govt.:—*Held:* to permit the arrest of the vessel would be contrary to principles of international comity, as it would compel the Esthonian Govt., whose sovereignty was entitled to be respected, to submit to the jurisdiction of the British cts.; & the writ & all subsequent proceedings must be set aside.—THE GAGARA, [1919] P. 95; 88 L. J. P. 101; 122 L. T. 498; 35 T. L. R. 259; 63 Sol. Jo. 301; 14 Asp. M. L. C. 517; C. A.

Annotations: **Folld.** The Jupiter, [1924] P. 236. **Reld.** The Annette, The Dora, [1919] P. 105; **Mentd.** Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

142c. —— — Subsequent sale to private owner.]—Damage occasioned by collision with a foreign state-owned vessel does not impose a maritime lien upon the vessel, & if the vessel be subsequently sold into private ownership she is not then liable to arrest in an action *in rem*.—THE TERVAETE, [1922] P. 259; 91 L. J. P. 213; 128 L. T. 176; 38 T. L. R. 825; 67 Sol. Jo. 98; 16 Asp. M. L. C. 48, C. A.

Annotations: **Reld.** The Colorado, [1923] P. 102; The Meandros, [1925] P. 61.

142d. ——.]—Pltfs., a foreign co., issued a writ *in rem* claiming possession of the steamship *J.* The writ was directed against "the steamship *J.* & all persons claiming any right or interest in the said steamship." The Union of Socialist Soviet Republics entered an appearance under protest & moved to set the writ aside on the ground that the ship was the property of the Union, a recognised independent sovereign State:—*Held:* the issue of a writ *in rem* against a vessel in which a foreign sovereign State claimed an interest was in effect impleading the sovereign State, &, although the right of the sovereign State to possession of the vessel was in dispute, the ct. could not investigate the facts, & the writ must be set aside.—THE JUPITER, [1924] P. 236; 93 L. J. P. 156; 132 L. T. 624; 40 T. L. R. 815; 16 Asp. M. L. C. 447, C. A.

143. *Add. Annotations:—Generally,* **Mentd.** The Porto Alexandre (1919), 89 L. J. P. 97; Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

143a. Vessel alleged to belong to foreign Government under decree of nationalisation.]—THE JUPITER (No. 2), No. 171a, *post.*

147. *Add. Annotations:—As to* (1) **Apld.** The Meandros, [1925] P. 61. *Generally,* **Mentd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

147a. —— Owners liable though possession of vessel transferred—Ship requisitioned.]—A Greek steamship owned by defts., a Greek co., was requisitioned by the Greek Govt. during the war in 1922 between Greece & Turkey. Under the terms of requisition the possession or control of the vessel passed to the Greek Govt., & the master & crew ceased to be employed by defts. & were conscripted into the Greek forces. At the end of the period of requisition the vessel had to be returned to defts. in the same condition as at the beginning of the period. While under requisition the vessel stranded, & was saved from possible total loss by the services of pltfs.' salvage ship. After the vessel had been returned to her owners she was arrested by pltfs. in an action *in rem:—Held:* the terms of requisition did not dispossess defts. of their property in the vessel; the services were of benefit to defts., as thereby they had their vessel instead of merely a claim against the Greek Govt.; as the services were not those of the crew of the Greek vessel, it was immaterial that the crew were the servants of the Greek Govt., & defts. were liable to pltfs. for salvage.—THE MEANDROS, [1925] P. 61; 94 L. J. P. 37; 132 L. T. 750; 41 T. L. R. 236; 16 Asp. M. L. C. 476.

149. *Add. Annotations:—As to* (1) & (2) **Apld.** The Meandros, [1925] P. 61. *Generally,* **Mentd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

150. *Add. Annotation:*—**Reld.** The Sylvan Arrow, [1923] P. 220.

Part II.—Jurisdiction in Particular Cases.

170. *Add. Annotation:*—**Reld.** The Annette, The Dora, [1919] P. 105.

170a. ——.]—THE ANNETTE, THE DORA, No. 141b, *ante.*

171. *Add. Annotation:*—**Reld.** The Annette, The Dora, [1919] P. 105.

171a. —— ——.]—By a contract of sale made in London, an English co. on behalf of the Soviet Govt. purported to sell the *J.* to defts., an Italian co. The vessel had belonged to a Russian co., but the Soviet Govt. asserted that by a decree of nationalisation all vessels of the Russian mercantile marine had become State property, & that the co. had ceased to exist. The Russian co. had moved its business to France, & an action *in rem* was brought in its French name, & in the name of the persons appointed by the French cts. to administer its affairs, against "the *J.*," claiming possession. The Italian co. entered an appearance & moved to set aside the writ:—*Held:* (1) there is no established rule that the Admlty. Ct. will not entertain possession suits in respect of foreign vessels except at the request of both

in rem against its property. That immunity from arrest of a foreign state-owned ship is not affected by the vessel being used for trading purposes & as a cargo carrier, nor does it matter how the vessel is being employed.—BROWN, JR. *v.* S.S. INDOCHINE (1921), 21 Exch. C. R. 406.—CAN.

parties or with the consent of the accredited representative of the country to which the vessel belongs; the matter is one for the discretion of the ct.; (2) the proceedings did not implead the Soviet Govt. directly or indirectly; (3) the question of authority to institute the action was a matter which should be referred to the judge at the trial; (4) the motion to set aside the writ failed.—THE JUPITER (No. 2), [1925] P. 69; 94 L. J. P. 59; 133 L. T. 85; 16 Asp. M. L. C. 491, C. A.

213. *Add. Annotation:*—**Reld.** The Annette, The Dora, [1919] P. 105.

254. *Add. Annotation:*—*As to* (2) **Consd.** The Lord Strathcona, [1925] P. 143.

254a. —— **Right of charterer—To dispute validity of mortgage.**]—Pltfs. were mtgees. of a vessel which had been chartered by her owners, the mtgors., for a succession of seasons with options for a renewal which did not expire until 1932. Pltfs. brought an action *in rem* against the shipowners, claiming judgment for the validity of the mtges. & an order for sale of the vessel by the marshal. No appearance was entered by defts. & judgment was given condemning the vessel & ordering her sale. Thereupon the charterers intervened & claimed (a) a declaration that the charterparty was binding on the mtgees., who had notice of its existence when the mtges. were executed, & (b) an injunction to restrain pltfs. from exercising their right to an order for sale of the vessel except subject to the terms of the charterparty. The interveners also alleged that the mtges. were invalid:—*Held:* the interveners had no *locus standi* to dispute the validity of the mtges., but were only entitled to be heard on the question whether pltfs. ought to be restrained from exercising their rights in such a way as to interfere with the interveners' contractual rights under the charterparty.—THE LORD STRATHCONA, [1925] P. 143; 95 L. J. P. 5; 133 L. T. 765; 41 T. L. R. 638, 69 Sol. Jo. 762; 16 Asp. M. L. C. 536.

262. *Add. Annotation:*—**Reld.** The St. George, [1926] P. 217.

267. *Add. Annotation:*—**Reld.** The James W. Elwell, [1921] P. 351.

269. *Add. Annotation:*—**Consd.** The St. George, [1926] P. 217.

276. *Add. Annotation:*—**Reld.** The James W. Elwell, [1921] P. 351.

277. *Add. Annotation:*—**Reld.** The St. George, [1926] P. 217.

278. *Add. Annotation:*—**Reld.** The James W. Elwell, [1921] P. 351.

279. *Add. Annotation:*—**Mentd.** The Russland, [1924] P. 55.

283. *Add. Annotation:*—**Reld.** The James W. Elwell, [1921] P. 351.

284. *Add. Annotation:*—*Generally.* **Mentd.** The James W. Elwell, [1921] P. 351.

286. *Add. Annotation:*—**Reld.** The James W. Elwell, [1921] P. 351.

288. *Add. Annotation:*—**Reld.** The James W. Elwell, [1921] P. 351.

289. *Add. Annotation:*—**Reld.** The St. George, [1926] P. 217.

291. *Add. Annotations:*—*Generally,* **Reld.** The St. George, [1926] P. 217. **Mentd.** The James W. Elwell, [1921] P. 351.

300. *Add. Annotation:*—**Reld.** The St. George, [1926] P. 217.

315. *Add. Annotation:* **Mentd.** Matthey v. Curling, [1922] 2 A. C. 180.

322. *Add. Annotations:* **Reld.** Pocahontas Fuel Co. v. Ambaticlos (1922), 27 Com. Cas. 148. **Mentd.** The Mogileff, [1921] P. 236.

328a. —— —— **Default of appearance.**]—A firm of ship repairers commenced an action *in rem* against the owners of a vessel which they had repaired. It appeared from the statement of claim that the ship was registered in an English port. No appearance was entered:—*Held:* it not being shown to the satisfaction of the ct. that at the time of the institution of the cause any owner or part owner of the ship was domiciled in England or Wales, the ct. would not refuse jurisdiction under sect. 5 of the above Act.—THE MAGGIE A. (1922), 128 L. T. 480; 16 Asp. M. L. C. 117.

329. *Add. Annotation:*—**Reld.** Pocahontas Fuel Co. v. Ambaticlos (1922), 27 Com. Cas. 148.

331. *Add. Annotations:*—**Reld.** The Mogileff,

PART II. SECT. 1, SUB-SECT. 2.

182 i. *Wrongdoer.*]—Where a ship has been wrongfully seized by her crew the ct. will order the marshal to deliver possession of it to the owner upon giving security.—PACIFIC GREAT EASTERN RY. CO. v. THE CLINTON (1918), 21 Exch. C. R. 169; 27 B. C. R. 400; [1919] 1 W. W. R. 947.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—A.

250 i. *Admiralty Court Act,* 1861 (c. 10)—*Mortgage registered abroad.*]—Action *in rem*, to recover the balance due on a deed of mtge., executed at Buffalo & registered there according to the law & regulations of the State of New York. The ship was arrested & released on bail. Deft. moved for an order to set aside the writ of summons, etc., for want of jurisdiction. On the hearing F. moved to amend, which amendment was in substance an allegation that deft. undertook to have the ship placed under Canadian register & to mtge. the ship, which he failed to do. The ship was not under arrest or seizure at the time of the institution of the action:—*Held:* (1) the ct. was without jurisdiction to entertain the claim; (2) the amendment could not be allowed.—FINNIGAN v. S.S. NORTHWEST (1920), 20 Exch. C. R. 180.—CAN.

PART II. SECT. 5, SUB-SECT. 1.—A.

327 i a. —— ——.)—A vessel was seized by a mtgee. when it was being repaired by pltf. in pltf.'s yard. Pltf. brought action in the Admlty. Ct. claiming a lien for repairs done at the time the vessel was in possession & repairs previously executed on her last trip:—*Held:* the ct. had no jurisdiction to entertain the action, as the vessel was not "under arrest" at the time the writ was issued.—MARTIN v. THE SEA FOAM (1921), 68 D. L. R. 750; 30 B. C. R. 398; [1922] 2 W. W. R. 1151.—CAN.

327 i b. —— ——.)—THE PACIFICO v. WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 163; [1925] Exch. C. R. 32; *affd.*, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 99; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—CAN.

327 iii. —— ——.)—*Held:* work done in making alterations in & addition to the pilot-house, rig, spars, sails, tanks, etc., of a gasoline boat necessitated by her intended new employment in outside waters, was for the "building" or "equipping" of a ship within s. 4 of the above Act.—EMERSON BROTHERS v. THE MAPLE LEAF, [1923] 4 D. L. R. 1201; [1923] Exch. C. R. 30; 31 B. C. R. 443; [1923] 1 W. W. R. 76.—CAN.

327 iv. —— "*Building*" *any ship.*]—EMERSON BROTHERS v. THE MAPLE LEAF, No. 327 iii., *ante.*—CAN.

329 ii. —— *Ship on colonial register—Actual owner foreigner.*]—The C. was registered at Vancouver, B.C., & was owned by a co., having its head office at the same port. The co. was practically A., who was domiciled in San Francisco, U.S.A., being the owner of 995 shares of a total of 1,000 shares, capital stock of the co. In an action for the price of necessaries:—*Held:* as the home port of the C. was really San Francisco where the true owner was domiciled, who was a foreign vessel, & the ct. had jurisdiction.—HALEY v. S.S. COMOX, [1920] 3 W. W. R. 325; 20 Exch. C. R. 86.—CAN.

[1921] P. 236. **Mentd.** Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148.

333. *Add. Annotation :* —**Mentd.** The Mogileff, [1921] P. 236.

334. *Add. Annotation :* - **Reld.** The Mogileff, [1921] P. 236.

335. *Add. Annotation :* - **Reld.** The Mogileff, [1921] P. 236.

336. *Add. Citation : sub nom.* THE WEST FRIESLAND, Sw. 456, P. C.

Add. Annotations : **Reld.** Laws v. Smith, The Rio Tinto (1881), 9 App. Cas. 356; Northcote v. Henrich Bjorn, The Henrich Bjorn (1886), 11 App. Cas. 270; The Mogileff, [1921] P. 236. **Mentd.** The Riga (1872), L. R. 3 A. & E. 516.

337. *Add. Annotation : As to* (5) **Reld.** The Mogileff, [1921] P. 236.

338. *Add. Annotation :* **Reld.** The Mogileff, [1921] P. 236.

338a. - - -

429. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

430. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

430a. —— Pilotage Act, 1913 (c. 31), s. 49.] The High Ct. of Admlty. & its successor, the present Admlty. Div. of the High Ct., have always had jurisdiction to entertain an action *in rem* for pilotage dues, & the pilot is not restricted to his right under the above sect., of taking proceedings in a ct. of summary jurisdiction. *Qu.:* whether there is a maritime lien in respect of pilotage dues.—THE AMBATIELOS, THE CEPHALONIA, [1923] P. 68; 92 L. J. P. 45; 128 L. T. 699; 39 T. L. R. 183; 16 Asp. M. L. C. 120.

433. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

435. *Add. Annotation :*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

437. *Add. Annotation :*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

459. *Add. Annotation :*—*As to* (1) **Consd.** The Colorado, [1923] P. 102.

460. *Add. Annotation :* *As to* (1) **Refd.** The Colorado, [1923] P. 102.

469. *Add. Annotation :*—**Mentd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

470. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

471. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

483. *Add. Annotations :* **Consd.** The Rosalind (1920), 90 L. J. P. 126; The Joannis Vatis, [1922] P. 92. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127; G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; The Zelo, [1922] P. 9. **Mentd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

489. *Add. Annotation :*—**Consd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

491. *Add. Annotation :*—**Refd.** The Mostyn (1926), 135 L. T. 693.

494. *Add. Annotations :*—**Refd.** The Sylvan Arrow, [1923] P. 220. **Mentd.** The Penrith Castle, [1918] P. 142.

504. *Add. Annotation :* **Refd.** The Tervaete, [1922] P. 259.

508. *Add. Annotation :*—**Mentd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

511. *Add. Annotation :*—**Mentd.** Gore-Booth *v.* Manchester (Bp.), [1920] 2 K. B. 412.

516. *Add. Annotation :*—**Mentd.** Gore-Booth *v.* Manchester (Bp.), [1920] 2 K. B. 412.

518. *Add. Annotations :*—**Refd.** McColl *v.* Canadian Pacific Ry., [1923] A. C. 126; The Molière (1924), 41 T. L. R. 154. **Mentd.** Parry *v.* Harding, [1925] 1 K. B. 111.

518a. ——————.] In a collision between Swedish & British steamships, for which both ships were held to blame, a seaman on the former vessel was drowned. Under Swedish law the Swedish shipowners paid compensation to the relatives of the seaman. At the reference to assess the collision damage the Swedish shipowners claimed to recover from the owners of the British vessel a moiety of the compensation so paid. The registrar allowed the item. On appeal: *Held:* the decision of the registrar was wrong for apart from Maritime Conventions Act, 1911 (c. 57), the Ct. of Admlty. had no jurisdiction to entertain an action *in rem* for loss of life, & the Admlty. rules as to division of loss had no application to such a claim, & sect. 3 of that Act, which provided for contribution between the owners of wrongdoing vessels in respect of (*inter alia*) damages for loss of life or personal injuries, only applied to damages recoverable by action, & not to claims for compensation arising out of some statute & independently of fault on the part of the shipowner.—THE MOLIÈRE, [1925] P. 27; 94 L. J. P. 28; 132 L. T. 733; 41 T. L. R. 154; 16 Asp. M. L. C. 470.

518b. Application of Maritime Conventions Act, 1911 (c. 57).] —THE MOLIÈRE, No. 518a, *ante*.

519. *Add. Annotations :* *As to* (1) **Refd.** The Koursk, [1924] P. 140. *As to* (2) **Refd.** The Moliere (1924), 41 T. L. R. 154. *Generally*, **Mentd.** Ellerman Lines *v.* Grayson, [1919] 2 K. B. 514; Weld-Blundell *v.* Stephens, [1920] A. C. 956; Anchor Line *v.* Dundee Harbour Trustees, Ellerman Lines *v.* Same, Thomson, Shepherd *v.* Same (1922), 38 T. L. R. 299.

521. *Add. Citation :* [1909] P. 170.

Add. Annotation : *As to* (2) **Refd.** The Moliere (1924), 41 T. L. R. 154.

PART II. SECT. 7, SUB-SECT. 2. B.

sl. *Assignee of wages.*]—The maritime lien attaching to a seaman's wages is personal to the seaman & not transferable.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—**CAN.**

sm. *Person not having signed articles—Nor having lived on board.*]—*Held:* claimant not having signed the ship's articles, not having lived on board, & the sum sued for not having been earned on board, he was not a seaman.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—**CAN.**

sn. *Person voluntarily paying wages.*]—No one voluntarily paying the wages of one or more of the crew can claim a lien against the ship for the amount so paid.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—**CAN.**

PART II. SECT. 7, SUB-SECT. 3. A.

452 iii. —— *Contract made abroad.*]—The ct. will not interfere in a dispute as to wages arising out of a contract made abroad between the master of a foreign ship & the members of his crew.—NOLAN *v.* S.S. RUSSELL HAVERSIDE, [1921], C. P. D. 136.—**S. AF.**

454 vi. ——————.] A seaman who had signed on an American ship instituted an action in Quebec against the ship for wages. No notice of the institution of the action was given by him to the United States consul, & the affidavit to lead to warrant omitted to state the national character of the ship. Defts. moved to dismiss for defects in the affidavit, & the consul filed a protest against the action being allowed to proceed.—*Held:* (1) the protest of the American consul did not deprive the ct. of its jurisdiction; (2) the ct., in proper circumstances, might exercise its discretion to decline to proceed with such an action.—LOUIAT *v.* S.S. ALKMO, [1923] Exch. C. R. 10.—**CAN.**

PART II. SECT. 7, SUB-SECT. 3. B.

458 i. *Conflict of laws—Application of law of defendants' country.*]—Admlty. Ct. Act, 1861 (c. 10), s. 10, permits the application by the ct. of the law of the country of the litigants.—JACOBSON *v.* FORD MORGAN (1919), 19 Exch. C. R. 165; 49 D. L. R. 123.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2. A.

512 v. ——————.] Plff., a seaman, brought an action *in rem* for damages against a barge for bodily injuries sustained by him in an accident alleged to have been occasioned by negligence for which the ship was liable. *Held:* the damage done was not "by" the barge, but "on" the barge, & was not such damage as gave plff. a remedy *in rem*.—MURRAY *v.* THE BARGE NIAGARA (1919), 19 Exch. C. R. 1; 47 D. L. R. 437.—**CAN.**

523. *Add. Annotation :—As to* (2) **Refd.** The Molière (1924), 41 T. L. R. 154.

523a. —— ——.]—THE MOLIÈRE, No. 518a, *ante.*

528. *Add. Annotation :—* **Refd.** The Sheaf Brook, [1926] P. 61.

536. *Add. Annotations :—Generally,* **Refd.** Lewis *v.* Dreyfus (1926), 31 Com. Cas. 239. **Mentd.** Michalinos *v.* Dreyfus (1924), 131 L. T. 177; Van Nievelt Goudrian, Stoomvaart Maatschappij *v.* Forslind (1925), 133 L. T. 457.

541. *Add. Annotation :* **Mentd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

541a. — — — — **Indorsee of document acknowledging receipt of goods for shipment.**]—A document whereby the receipt of goods is acknowledged for shipment on board a named ship, or on some other ship for carriage by sea & delivery to the shipper's order, the document being signed on behalf of the master, is a bill of lading for the purposes of Bills of Lading Act, 1855 (c. 111), & the above sect.

Parcels of goods were accepted in N. for delivery at S. to the shippers' order, there being given to each shipper a document of the above-mentioned character. Upon the named ship arriving at S. the goods were not delivered. Resps., twenty firms, each being indorsees of one of the documents, issued a joint writ *in rem* claiming severally to recover damages. The writ stated that pltfs. claimed as consignees or indorsees of bills of lading for non-delivery of goods agreed to be carried by the named ship, or agreed to be shipped within a reasonable time by some other vessel of the same line. On affidavits sworn separately by pltfs., alleging that the goods were either lost or not shipped on any other vessel within a reasonable time, the ship was arrested. The owners of the ship took out a summons to set aside the writ & all proceedings thereunder: *Held:* (1) the documents in question were bills of lading within the above sect., & the proceedings being to set aside the writ & it not being denied that some of the goods were received on board, the action should proceed; (2) the action being *in rem* & the joinder of pltfs. convenient, the view of the full Bench of the Supreme Ct. that pltfs. could properly be joined under the rules locally applicable should not be interfered with.—MARLBOROUGH HILL, SHIP *v.* COWAN & SONS, [1921] 1 A. C. 444; 90 L. J. P. C. 87; 124 L. T. 645; 37 T. L. R. 190; 15 Asp. M. L. C. 163; 26 Com. Cas. 121, P. C.

Annotation :—As to (1) **Distd.** Diamond Alkali Export Corpn. *v.* Bourgeois, [1921] 3 K. B. 443.

546. *Add. Annotation :—* **Refd.** Marlborough Hill, Ship *v.* Cowan, [1921] 1 A. C. 444.

562. *Add. Annotation :—* **Refd.** The Sheaf Brook, [1926] P. 61.

565a. **Judicature (Consolidation) Act, 1925 (c. 49), ss. 22, 58 (2)—Owner domiciled in England—Application to transfer action to King's Bench Division.**]—(1) Pltfs., as owners of cargo on board defts.' ship, brought an action *in personam* in the Admlty. Div. for damages for breach of the contract of carriage. Defts. were domiciled in England. On an application by them to transfer the cause to the King's Bench Div., the judge held that he had a discretion to retain it in the Admlty. Div.:—*Held:* s. 58 (2) of the above Act did not give the ct. discretion to retain a cause in respect of which the Act expressly provided that the Div. had no jurisdiction, & the action must be transferred to the King's Bench Div.

(2) The note to R. S. C., Ord. 49, r. 3, that the Ct. of Appeal cannot order a transfer without the consent of the presidents of both the Divs. from & to which the transfer is proposed to be made, does not apply to cases where the Ct. of Appeal has held that the one Div. has no discretion to retain the cause in that Div. In such cases the transfer is made subject only to the consent of the president of the Div. to which the cause is to be transferred (ATKIN, L.J.).—THE SHEAF BROOK, [1926] P. 61, 95 L. J. P. 113; 134 L. T. 534; 17 Asp. M. L. C. 14, C. A.

571. *Add. Annotation :—* **Mentd.** The Rosalind (1920), 90 L. J. P. 126.

578. *Add. Annotation :—* **Refd.** The Wilhelmina, [1923] P. 112.

579a. **Ship injured in dock—Dockowners repairing ship—In dock belonging to others.**]—By the negligence of pltfs.' servants while engaged on work on a steamship in the Hornby Dock, belonging to the Mersey Docks & Harbour Board, the vessel & her cargo were damaged by fire, & pltfs. were held liable in damages. Pltfs. sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, on the ground that they were the owners of a dry dock at Garston: *Held:* the liability being in no way connected with the fact that pltfs. were dockowners, they were not entitled to a decree of limitation of liability.—THE CITY OF EDINBURGH, [1921] P. 274; 90 L. J. P. 304; 125 L. T. 375; 37 T. L. R. 468; 15 Asp. M. L. C. 231, C. A.

Annotation :— **Distd.** The Huapehu (1926), 42 T. L. R. 708.

579b. —— ——.]—Pltfs., owners of a dry dock, sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, in respect of damage caused by a fire which broke out on defts.' vessel owing to the negligence of pltfs.' servants while the vessel was being repaired by them in the dry dock:—*Held:* while some limitation must be put upon the general language of the sect., which, if applied in its strict literal sense would lead to an absurdity, the limitation to be put was not in respect of the nature of the act done but in respect of area, *i.e.*, the damage must be in some way

PART II. SECT. 9, SUB-SECT. 1.—B.

564 i. *Admiralty Court Act,* 1861 (c. 10), s. 6. *No breach of duty* (*Contract with shippers imposing no obligation on ship.*) Pltfs. agreed to purchase goods, the shippers to deliver same at an agreed point. The contract did not purport to be made by or on behalf of the ship, but by the shippers, with pltfs., who claimed damages for breach of contract for non-delivery, & at their request a warrant to arrest the ship & her cargo was issued:—*Held:* (1) pltfs. not having been shown to be "the owners, or consignees or assignees" of the bill of lading of the cargo, the ct. had no jurisdiction in the matter, & the warrant of arrest should be set aside; (2) the contract referred to in the above sect. contemplated an obligation on the part of the ship, & the contract sued on imposed no such obligation.—LAVALLEE *v.* THE ISTAR, [1923] Exch. C. R. 212.—CAN.

564 ii. —— *Goods shipped from Canadian port.*)—The jurisdiction the above sect. confers upon the ct. is clearly confined to cases of damage to goods carried by ships into a Canadian port, & does not extend to the case of goods shipped from Canada to foreign ports.—HARRIS ABATTOIR CO. *v.* ALERO (OWNERS), [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—CAN.

connected with the ownership of the dock.—THE RUAPEHU, [1927] P. 47; 42 T. L. R. 708, C. A.

593. *Citations*:—For "36 L. T. 361" read "6 L. T. 361."

—— —— **Rival salvors—Injunction to restrain act on high seas.**]—In 1922 pltfs. fitted out an expedition to salve cargo from the wreck of a Dutch steamship which had sunk in 1916 in the North Sea in over one hundred feet of water. Pltfs. worked at the scene of the wreck whenever the weather & tides permitted during the summer of 1922 & from Apr. to July, 1923. During that time they had succeeded in cutting a hole into No. 4 hold, had buoyed the wreck, & had extracted some portions of cargo of little value at a cost of over £40,000. In July, 1923, defts., British subjects & partners in a rival salvage co., arrived on the scene in a British registered ship, & by sending down their own divers & interfering with pltfs.' diving operations, tried to secure possession of the wreck & cargo, & either prevent further work on the part of pltfs. or establish themselves with pltfs. in concurrent occupation:—*Held*: (1) an action in respect of injurious acts done on the high seas had always been within the jurisdiction of the High Ct. of Admlty.; (2) pltfs. were sufficiently in occupation of the wreck to exclude third parties from interfering with the property; (3) as defts.' interference was high-handed & deliberate they would be restrained until further order from doing any acts at or near the wreck whereby pltfs. might be prevented or hindered in the carrying on of their salvage operations.—THE TUBANTIA, [1924] P. 78; 93 L. J. P. 148; 131 L. T. 570; 40 T. L. R. 335; 16 Asp. M. L. C. 346.

598. After this case insert, "Prize salvage, PRIZE LAW."

603. *Add. Annotation*:—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

606. *Add. Annotations*:—**Consd.** The Meandros, [1925] P. 61. **Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

611. *Add. Annotation*:—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

613. *Add. Annotations*:—**Consd.** The Meandros, [1925] P. 61. **Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

617. *Add. Annotation*:—**Consd.** Bradley *v.* Newsom, [1919] A. C. 16.

619. *Add. Annotation*:—*As to* (1) **Refd.** Bradley *v.* Newsom, [1919] A. C. 16.

622. *Add. Annotation*:—**Refd.** The Fagernes, [1926] P. 185.

648a. Ship not entitled to be registered as British ship—Ship under jurisdiction of Prize Court.]—A ship registered as a British ship, & nominally owned by a duly registered British co., was in fact owned & controlled by the Hamburg-Amerika Line, of Hamburg, which, in the person of its nominees, owned all the shares in the British co. & appointed its directors. Accordingly, after the outbreak of war with Germany, the ship was seized as prize, & on July 28, 1916, the Prize Ct. pronounced her to have belonged at the time of seizure to enemies of the Crown, & ordered her to be detained by the marshal until further order. Meanwhile on Jan. 11, 1916, under Prize Ct. Rules, Ord. 29, the ship had been requisitioned by the Lords Comrs. of the Admlty., & she remained in their possession. On Apr. 5, 1917, the writ in the present action was issued claiming a declaration under M. S. Acts, 1891 (c. 60), & 1906 (c. 48), that the ship was forfeited to the Crown on the ground that she was not entitled to be registered as a British ship:—*Held*: as the Lords Comrs. of the Admlty. had merely temporary possession of the ship & had to return her into the custody of the Prize Ct. which had at some time to make a final decree either of condemnation or release, the Admlty. Ct. had no jurisdiction to entertain the forfeiture action & to make the usual order for appraisement & sale, & the action must be dismissed.—THE ST. TUDNO, [1918] P. 174; 87 L. J. P. 105; 34 T. L. R. 357; 62 Sol. Jo. 521.

650a. —— **Injunction.**]—THE TUBANTIA, No. 594b, *ante*.

650b. **Res under jurisdiction of Prize Court.]** THE ST. TUDNO, No. 648a,

Part III.—Present and Former Practice of the Admiralty Division of the High Court of Justice and of Courts other than English County and local Courts.

668a. —— **Issue—Res not within jurisdiction.**]—(1) It is not necessary that, at the time of the issue of a writ *in rem*, the *res* should be within the jurisdiction of the ct.; & Maritime Conventions Act, 1911 (c. 57), s. 8, which provides that in the case of collision or salvage actions the proceedings must be

within two years of the
of action, is complied with if the writ is issued within two years; the sect. does not contemplate that the arrest of the *res* the commencement of the pro-

(2) In general, the ct. will not grant an

PART II. SECT. 11, SUB-SECT. 2.—B.
Action in rem—Or in per-
—The first & most proper for the recovery of salvage in an *in rem*.—HATTON *v.* ART, DURBAN L. C. 154; 56 Sc. L. R.

PART II. SECT. 16.
654 i. *Exception to Made after trial.*]—An objection to the jurisdiction will hold good even if made after the trial.—STACK *v.* THE LEOPOLD (1919), 16 Exch.

PART III. SECT. 1, SUB-SECT. A. (a).
—Pltfs. $4,000 dam-
by reason of
one of their barges & the *B.* The was arrested & the bail fixed at $4,0

extension of time for the renewal of an unserved writ, which has not been renewed within the period of one year as provided by R. S. C., Ord. 8, r. 1, if, but for the extension of time, the claim would be barred by a statute of limitation. But, inasmuch as Maritime Conventions Act, 1911 (c. 57), s. 8, contains provisos for extension of time unknown to any other statutes of limitation, the application to renew a writ in an action which comes within the operation of sect. 8 must be considered on its merits, & if, under the circumstances, the ct. would give leave to issue a writ notwithstanding the lapse of two years, the ct. will allow an extension of time for the renewal of a writ, the time for the renewal of which has expired.—THE ESPANOLETO, [1920] P. 223; 90 L. J. P. 32; 125 L. T. 121; 36 T. L. R. 554; 15 Asp. M. L. C. 287.

668b. —— **Motion to set aside—Facts in dispute.**] In an action *in rem* for damage by collision defts. moved to set aside the writ & all subsequent proceedings on the ground that their vessel at the time of the collision was under requisition to, & in the sole control & possession of, the United States Navy Department, & that accordingly no maritime lien attached to her. Pltfs. did not admit the facts set out in defts.' affidavit in support of the motion:—*Held:* the facts being in dispute the ct. could not try the issue on motion by affidavit & the motion must be dismissed, but without prejudice to the right of defts. to apply, when the issues were defined by pleadings, for the question of law to be tried as a preliminary point.—THE SYLVAN ARROW, [1923] P. 14; 92 L. J. P. 23; 128 L. T. 418; 39 T. L. R. 25; 16 Asp. M. L. C. 115.

669. *Add. Annotation:*—*As to* (1) **Consd.** The Joannis Vatis, [1922] P. 92.

673. *Add. Annotations:*—**Consd.** The Creteforest, [1920] P. 111; Marlborough Hill, Ship *v.* Cowan, [1921] 1 A. C. 444.

683a. Renewal of writ—Extension of time for—Maritime Conventions Act, 1911 (c. 57), s. 8.] —THE ESPANOLETO, No. 668a, *ante*.

700a. Right to arrest—Ship under requisition.]—Pltfs.' steamship & defts.' steamship, the *L.L.*, collided in Sept. 1917. The *L.L.* was at the time under requisition:—*Held:* there could be no effective arrest of the vessel while she was under requisition.—THE LARGO LAW (1920), 123 L. T. 560; 15 Asp. M. L. C. 104.

700b. —— **Ship seized under writ of fieri facias.**]—A foreign ship was seized under a sheriff's writ of *fi. fa.* in execution of a judgment obtained by the charterers of the ship against the owners of fifty-six sixty-fourth shares in the ship. Subsequently the ship was arrested by the Admlty. marshal in an action *in rem* for necessaries. Various other writs *in rem* were issued against the ship, including a writ by the master in respect of wages. The sheriff was unable to effect a sale, & the ship was sold by the marshal without prejudice to the rights of the various claimants:—*Held:* the fact that the sheriff was in possession did not deprive the marshal of his power to arrest the ship in actions *in rem*.—THE JAMES W. ELWELL, [1921] P. 351; 90 L. J. P. 132; 37 T. L. R. 178.

701. *Add. Annotation:*—**Consd.** The James W. Elwell, [1921] P. 351.

706. *Add. Annotations:*—*Generally*, **Mentd.** The Crimdon (1918), 35 T. L. R. 81; The Porto Alexandre (1919), 89 L. J. P. 97.

706a. Re-arrest—Damage in excess of bail—Second action—Right to bring action in personam.]—In an action *in rem* in respect of damage by collision defts. gave bail in the sum of £100,000 as representing the full value of their vessel & the limit of their liability according to French law. In the Admlty. Ct. both pltfs.' & defts.' vessels were held to blame, but the Ct. of Appeal held defts.' vessel alone to blame & this decision was upheld by the House of Lords. The £100,000 being insufficient to satisfy pltfs.' judgment, pltfs. who admitted that *quâ* damages they could not recover more than the £100,000, threatened to arrest defts.' vessel in respect of interest & costs; & under the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to $5,512.94. Pltfs. moved to amend their writ by adding to the amount claimed:—*Held:* the ct. might direct measures to be taken to do full justice to pltfs., & to that end permit the amendment.—HALL COAL CO. *v.* THE BAYUSONA, [1923] Exch. C. R. 128.—**CAN.**

673 i. *Parties—Joinder of plaintiffs—After judgment.*] In the course of a trial in the Admlty. Ct. pltf. was allowed to amend by adding a party pltf., but failed to amend formally pursuant to the order & entered the formal judgment with only the original pltf. named therein, & proceeded to assess damages before the registrar:—*Held:* in the circumstances pltf. had not elected to abandon the order for amendment & should be allowed to have the judgment & prior proceedings amended in accordance therewith.—EVANS, COLEMAN & EVANS, LTD. *v.* THE ROMAN PRINCE, [1924] 3 D. L. R. 95; [1924] Exch. C. R. 133; 2 W. W. R. 465; 34 B. C. R. 135.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A. (a).

701 iii. —— *Creditor's action—Claim for building, equipping or repairing.*]—As soon as a creditor finds a ship under arrest of the ct., he may bring his action for, & the Admlty. Ct. acquires immediate & irrevocable jurisdiction over, any claim for building, equipping, or repairing the ship. That jurisdiction is established without the litigant having to show that the original action under which the ship was arrested must eventually succeed, & notwithstanding that the arrest was made without particulars being given to prove without doubt the status of pltf. in that original action.—ERIKSEN BROTHERS *v.* THE MAPLE LEAF (1922), 67 D. L. R. 261; [1922] 3 W. W. R. 41.—**CAN.**

701 iv. —— *Repairs continued after arrest.*]—Resps. contracted with the owner of a ship to do certain repairs, & it was delivered to them for the purpose. When the repairs were going on the ship was arrested at the suit of appts., who claimed for earlier repairs & necessaries. After the arrest the ship was left in the actual possession of resps., who continued to do the repair work contracted for without the sanction of the ct. but in good faith:—*Held:* resps. should have priority for repairs made after the arrest so far as the selling value of the ship was thereby increased.—MONTREAL DRY DOCKS & SHIP REPAIRING CO., LTD. *v.* HALIFAX SHIPYARDS, LTD., [1920] 3 W. W. R. 25; 54 D. L. R. 185; 60 S. C. R. 359.—**CAN.**

d. Read now "**706a i.**"

706a ii. —— —— *Mistake in sum claimed—Cost of repairs exceeding estimate.*]—Pltfs. claimed $4,000 damages, by reason of a collision between one of their barges & the *B.* The *B.* was arrested & the bail fixed at $4,000, the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to $5,512.94. Pltfs. moved to amend their writ by adding to the amount claimed & for the issue of a warrant to re-arrest the *B.*:—*Held:* the ct. might direct measures to be taken to do full justice to pltfs., & to that end permit the issue of a warrant for the re-arrest of the ship, but with costs of the motion & of the re-arrest against pltfs.—HALL COAL CO. *v.* THE BAYUSONA, [1923] Exch. C. R. 128.—**CAN.**

706a iii. —— —— *Dismissal of claim for salvage—Appeal.*]—Where a claim for salvage against a ship has been dismissed, there is no general right, in case of appeal, to hold the bail bond or after its cancellation to re-arrest the ship, nor will such right be granted without good reason therefor, such as that it appears to the ct. that the ship will not be within the jurisdiction to answer the appeal should it go against it.—THE FREIYA *v.* THE R. S.

protest, defts. provided bail in a further sum to avoid arrest:—*Held*: having received bail in the full value of defts.' vessel, pltfs. could not arrest her *in rem*, but could proceed *in personam*, & were entitled to a declaration that the amounts due in respect of interest & costs were enforceable by seizure & sale of the vessel by a sheriff under a writ of *fi. fa.*—THE JOANNIS VATIS (No. 2), [1922] P. 213; 91 L. J. P. 196; 127 L. T. 491; 38 T. L. R. 566; 16 Asp. M. L. C. 13.

715. *Add. Annotation*: **Mentd.** The St. George, [1926] P. 217.

742. *Add. Annotation*: **Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

746. *Add. Annotation*: **Consd.** The Joannis Vatis (No. 2), [1922] P. 213.

760. *Add. Annotation*:—**Refd.** Melanie S.S. v. San Onofre S.S., [1925] A. C. 246.

764. *Add. Annotation*:—**Refd.** The Annette, The Dora, [1919] P. 105.

766. *Add. Annotation*: **Mentd.** The Joannis Vatis (No. 2), [1922] P. 213.

766a. — — **Waiver of right to plead Maritime Conventions Act, 1911 (c. 57), s. 8.**]—By entering an unconditional appearance to a writ issued more than two years after the date of salvage services, defts. do not waive the right of pleading the protection of the above Act in their defence & raising it at the trial of the action.—THE LLANDOVERY CASTLE, [1920] P. 119; 89 L. J. P. 111; 121 L. T. 383; 15 Asp. M. L. C. 153.

Effect of Maritime Conventions Act, 1911 (c. 57), *see, generally*, SHIPPING.

780. *Add. Annotation*: **Refd.** The Consul Olsson, [1920] P. 13.

780a. — — — — — —, THE SAN ONOFRE, No. 780b, *post*.

780b. — — **Effect of contractual arrangement between owner & charterer.**]—(1) The Admlty. marshal appraised a salved steamship at the sum of £360,811. On an application to vary or set aside the appraisement on the ground that the ship had been appraised at her market value instead of at her value to her owners, which, owing to the fact that she had been chartered to time charterers at a low rate of hire in 1914 for a period which did not expire until 1930, was less than £1,000,000:—*Held*: for purposes of appraisement of a salved vessel contractual arrangements between the owners & charterers are immaterial, & the marshal's valuation was properly arrived at & was based on the right principle.

(2) The general rule is that an appraisement by the marshal is conclusive, & it is only in very exceptional cases that an application to vary or set aside the appraisement will be allowed.—THE SAN ONOFRE, [1917] P. 96; 86 L. J. P. 103; 116 L. T. 800; 14 Asp. M. L. C. 74.

Annotation:—*As to* (2) **Consd.** The Consul Olsson, [1920] P. 43.

781a. Nature of bail.]—THE BORRE, No. 781b, *post*.

781b. Undertaking to put in bail—Afterwards withdrawn—Effect of subsequent arrest of vessel.]—On June 22, 1920, defts.' solrs. gave an undertaking to enter an appearance & put in bail in respect of a writ *in rem* claiming damages in respect of loss by collision. In consequence defts.' vessel was not arrested. On Feb. 17, 1921, defts.' solrs. wrote to pltfs.' solrs. that their clients were unable to make arrangements for bail, that accordingly the undertaking for bail was withdrawn, & that, as the vessel was within the jurisdiction of the ct., pltfs. could arrest her. Pltfs.' solrs. arrested the vessel, but wrote to defts.' solrs. that they reserved all their clients' rights under the undertaking for bail. On Mar. 16, 1921, the vessel was appraised as being at that time of a value of £600. Defts. provided bail in that sum & the vessel was released. On Apr. 12, pltfs. applied for an order that defts.' solrs. should forthwith provide good & sufficient bail, pursuant to their undertaking. It appeared that in June, 1920, the value of the vessel was much in excess of £600, & pltfs. estimated her value at £1,500:—*Held*: (1) the undertaking to give bail could not be withdrawn by substituting the vessel for the bail; (2) pltfs. had not waived their rights under the undertaking by arresting the vessel; (3) defts.' solrs. must complete their undertaking by putting in bail to the value of the vessel as on June 22, 1920; (4) nature of bail discussed. THE BORRE, [1921] P. 390; 91 L. J. P. 1; 125 L. T. 570; 37 T. L. R. 968; 55 Sol. Jo. 715; 15 Asp. M. L. C. 331.

781c. — — **When value of ship ascertained.**]—THE BORRE, No. 781b, *ante*.

781d. Liability limited to amount of bail No second action if bail insufficient Action in personam—For interest & costs.]—THE JOANNIS VATIS (No. 2), No. 706a, *ante*.

PART III. SECT. 1, SUB-SECT. 2.—A. (b).

st. ***Mala fide arrest—Abuse of process of court—Rights of other claimants.***]—A ship was arrested at the suit of a member of a firm. His independent claim for wages as a "ship's carpenter on board the ship," was in fact only a part of his firm's claim, & immediately after the ship was arrested his firm's action was instituted: *Held*: these facts so obviously disclosed *mala fides* & an abuse of the process of the ct. that the arrest could be viewed as a sham proceeding & as not having any legal existence as regards the firm, but other claimants could support their writs on its existence in fact, because in good faith they instituted their suits relying upon the records of the ct. which on their face showed that its jurisdiction could be invoked. KIRKES (HOLDINGS) v. THE MAPLE LEAF, [1923] 4 D. L. R. 1201; [1923] Exch. C. R. 30; 31 B. C. R. 443; [1923] 1 W. W. R. 76.—CAN.

PART III. SECT. 1, SUB-SECT. 3. A.

a i. — — — — *Court without jurisdiction.*]—In the absence of jurisdiction existing by law, the filing of an appearance & the giving of bail by deft. do not give jurisdiction to the ct. in a proceeding *in rem*. Jurisdiction is not a matter of procedure & cannot be derived from the consent of parties. MCIVER v. THE BARQUE NEPTUNO (1919), 18 Exch. C. R. 1; 47 D. L. R. 437.—CAN.

a ii. — — — — — — — —.] A mere technical objection to an informality or irregularity in procedure may be waived by appearance, by the giving of bail or by taking a step in the action; but if, in fact, the ct. has no jurisdiction over the subject matter of the claim, no delay on the part of deft. & no step in the action taken by him can give the ct. jurisdiction.—HARRIS ABATTOIR CO. v. ALELO (OWNERS), [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—CAN.

781e. Benefit of bail—Action in name of cargo owners—Some owners not joining in proceedings.]—The steamships *W.* & *J.* came into collision & the *W.* & her cargo were damaged. Before the issue of the writ an undertaking to put in bail to the amount of £100,000, had been given on behalf of the owners of the *J.* The writ was in the names of "The owners of the steamship *W.* & cargo *v.* the owners of the steamship *J.*," but at that time no authority from any of the cargo owners had been received. While the litigation was proceeding the owners of the *W.* asked the various underwriters on the cargo, subrogated to the rights of the respective cargo owners, to join in the proceedings or share in the costs. Some assented & some declined. The litigation proceeded to the House of Lords, where the *J.* was held alone to blame. The sum of £100,000 being insufficient to satisfy all the claims, the owners of the *W.* contended that having sued as owners of the ship & bailees of the cargo they were entitled to receive the whole of the bail for which the undertaking had been given, pay themselves the amount of their own damage as shipowners in priority to all other claimants, & that the non-assenting cargo owners had no right to share in the fund:—*Held:* (1) although, as bailees of the cargo, the shipowners were entitled to recover the full value of the damage to the cargo, represented by the bail, they must account to all the owners of the damaged parcels of cargo for their share; (2) it was the duty of the ct., when the bail was recovered, to see that all persons having a claim on the fund, including the non-assenting cargo owners, shared in the distribution.—THE JOANNIS VATIS, [1922] P. 92; 91 L. J. P. 182; 126 L. T. 718; 15 Asp. M. L. C. 506, C. A.

781f. —— Several salvage actions.]—A vessel which had stranded on rocks & sustained heavy damage got off with the assistance of various salvors & was placed in dock for temporary repairs. In respect of these services various salvage actions & an action by the ship repairers for salvage &/or necessaries were instituted. No defence was put in, but in the first action an appearance was entered & an undertaking given to put in bail for ship, cargo & freight in the sum of £1,000. The cargo & freight were valued at £327. Before the other actions were instituted the cargo had been landed & dispersed. After some temporary repairs had been effected the vessel was sold by the marshal. She only realised £880:—*Held:* the bail for cargo & freight did not constitute a fund in which all the salvors could share; the undertaking was given in one action only, & pltfs. in that action, in which the total values were £1,217, could treat $\frac{327}{1217}$ of £1,000 as bail representing the cargo & freight.—THE RUSSLAND, [1924] P. 55; 93 L. J. P. 18; 130 L. T. 763; 40 T. L. R. 232; 68 Sol. Jo. 324; 16 Asp. M. L. C. 288.

781g. Amount of bail—Value of ship & freight—Limit of liability—Facts disputed by plaintiffs.]—If, in an action of damage by collision, the amount for which the action is brought exceeds the statutory limit provided by M. S. Act, 1894 (c. 60), s. 503, deft. shipowners on filing an affidavit in the damage action stating the tonnage of their ship & that the collision happened without their actual fault or privity, will, if these facts are not denied by pltf. shipowners, be entitled to have the ship released on bail being given to an amount sufficient to cover the statutory limit, together with interest & costs. But if pltfs. dispute the facts on which the right to limit liability depends, bail must be given to the full value of defts.' ship.—THE CHARLOTTE, [1920] P. 78; 89 L. J. P. 62; 123 L. T. 685; 36 T. L. R. 204; 64 Sol. Jo. 276; 15 Asp. M. L. C. 98.

796. *Add. Annotation:*—**Refd.** The Consul Olsson, [1920] P. 43.

806. *Add. Annotation:*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

808. *Add. Annotation:*—**Consd.** The Joannis Vatis (No. 2), [1922] P. 213.

810. *Add. Annotation:*—**Mentd.** The San Onofre, [1922] P. 243.

829. *Add. Annotation:*—*As to* (1) **Distd.** Bradley *v.* Newsom, [1919] A. C. 16.

834. *Add. Annotation:*—*As to* (1) **Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

837. *Add. Annotations:*—*As to* (1) **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255. *As to* (2) **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101.

839. *Add. Annotations:*—**Refd.** The Fagernes, [1926] P. 185. **Mentd.** The Clan Sutherland (1918), 88 L. J. P. 26.

840. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

842. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

843. *Add. Annotation:*—*As to* (2) **Refd.** Johnson *v.* Taylor, [1920] A. C. 144.

855. *Add. Annotation:*—**Refd.** The Creteforest, [1920] P. 111.

857. *Add. Annotation:*—**Refd.** The Creteforest, [1920] P. 111.

864. *Add. Annotation:*—**Refd.** The Creteforest, [1920] P. 111.

874a. —— —— ——.]—THE SHEAF BROOK, No. 565a, *ante.*

876a. Transfer by Court of Appeal—Necessity for consent of presidents of both Divisions.]—THE SHEAF BROOK, No. 565a, *ante.*

885. *Add. Annotations:*—**Mentd.** The James W. Elwell, [1921] P. 351; Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

890. *Add. Annotation:*—*As to* (1) & (2) **Consd.** The El Oso (1925), 133 L. T. 269.

892. *Add. Annotation:*—*As to* (1) & (2) **Expld.** The El Oso (1925), 133 L. T. 269.

893. *Add. Annotation:*—**Refd.** The El Oso (1925), 133 L. T. 269.

894a. —— Action between parties whose vessels have not been in collision with each other.]—Where the parties to a damage action are the owners of vessels which have not been in

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PART III. SECT. 5, SUB-SECT. 1. sa. *Object.*)—The object of a preliminary act is to obtain a statement recent *facto* of the circumstances, to prevent parties shaping their case to meet the one put forward by the other at trial.—LE BLANC *v.* THE EMILIEN BURKE (1919), 19 Exch. C. R. 24; 46 D. L. R. 59.—CAN.

collision with each other the practice as to requiring preliminary acts under R. S. C., Ord. 19, r. 28, is a matter for the discretion of the ct. In such cases the proper course is that there should be the communication between the solrs. which commonly takes place in admlty. cases, & that the solrs. should ascertain whether the parties are ready to file preliminary acts under Ord. 19, r. 28. If both parties are not ready to deliver preliminary acts, or one of them declares himself unable or unwilling, then the matter should be raised by summons. If in such a case an order is made for preliminary acts to be filed, such order is not properly complied with by the party whose vessel has not been in collision filing a blank preliminary act.—THE EL OSO (1925), 133 L. T. 269; 16 Asp. M. L. C. 530.

Annotation:—**Consd.** The Carlston & The Balcombe, [1926] P. 82.

894b. Who entitled to — Co-defendant.]—A collision took place between the *C.* & the *B.*, & subsequently the *C.* collided with pltfs.' vessel. Pltfs. issued a writ *in rem* against the owners of the *C.*, & the usual preliminary acts were filed by both parties. In their defence the owners of the *C.* blamed the *B.*, & pltfs. added the owners of the *B.* as second defts. Thereupon the owners of the *C.* obtained an order that the owners of the *B.* should forthwith file a preliminary act:—*Held:* (1) the only parties entitled as against second defts. to a preliminary act were pltfs., & they would be so entitled when they had filed a preliminary act against second defts.; first defts. were not entitled to require second defts. to file a preliminary act unless they chose to become pltfs. & issue a writ against second defts., & the order must be set aside; (2) if it were a matter of discretion, the guiding principle, that of mutuality, would be infringed by the order made, as second defts. would be bound by a preliminary act which they had filed, & the parties at whose instance it had been filed would not be bound, as against second defts., by the judgment in the present action.—THE CARLSTON, THE BALCOMBE, [1926] P. 82; 95 L. J. P. 51; 134 L. T. 766; 42 T. L. R. 312: 17 Asp. M. L. C. 33.

908. *Add. Annotation:*—*As to* (1) **Distd.** The Woodarra *v.* Admiralty (1921), 66 Sol. Jo. 183.

916. *Add. Annotation:*—**Distd.** The Woodarra *v.* Admiralty (1921), 66 Sol. Jo. 183.

939. *Add. Annotation:*—**Mentd.** The Refrigerant, [1925] P. 130.

952. *Add. Annotation:*—**Refd.** The San Onofre (1922), 92 L. J. P. 17.

969. *Add. Annotation:*—**Refd.** The Saxicava, [1924] P. 131.

969a. —— Action stayed, discontinued or dismissed—Counterclaim raised in correspondence.]—A notice of counterclaim contained in correspondence passing between pltf.'s & deft.'s solrs. is not sufficient to "set up" a counterclaim within R. S. C., Ord. 21, r. 16, so that the counterclaim may be proceeded with if pltf.'s action is stayed, discontinued or dismissed.

The counterclaim must at least be set up by some proceeding which is either directed by or recognised by the rules & in respect of which there is a record on the files of the ct.—THE SAXICAVA, [1924] P. 131; 93 L. J. P. 66; 131 L. T. 342; 40 T. L. R. 334; 68 Sol. Jo. 666; 16 Asp. M. L. C. 324, C. A.

1001. *Add. Annotation:*—**Refd.** The Creteforest, [1920] P. 111.

1023. *Add. Annotations:*—**Apld.** *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673. **Refd.** The Tervaete (1922), 128 L. T. 176; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

1027a. —— —— ——.]—Pltfs.' & defts.' vessels came into collision & both received damage. Pltfs. brought an action *in rem* against defts., "the owners of the steamship *N.*" Defts. counterclaimed, & applied to pltfs. for security to answer the counterclaim. Security was given, but on pltfs. making a similar application defts. refused to give security on the ground that the *N.* was owned by the French Govt., & was not subject to arrest:—*Held:* the ct. had no power to order security to be given or, in default thereof, to stay defts.' counterclaim.—THE NEPTUNE, [1919] P. 17; 88 L. J. P. 94.

1029. *Add. Annotation:*—**Mentd.** The Sylvan Arrow, [1923] P. 220.

1032. *Add. Annotation:*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1042. *Add. Annotations:*—**Mentd.** The Porto Alexandre (1919), 89 L. J. P. 97; Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

1046. *Add. Annotation:*—**Refd.** The Shropshire (1922), 127 L. T. 487.

PART III. SECT. 8, SUB-SECT. 2.—A.

998 ii. —— *Rejection of tender—Acceptance of increased tender after amendment of claim at trial.*]—In an action for salvage services, pltf. claimed $20,000 & in his statement of claim such amount of salvage remuneration as to the ct. might seem meet. The defence was delivered on Mar. 17, when deft. paid into ct. $2,000 & tendered it to pltf., who rejected it. Pltf. at the trial applied for leave to amend to set up an additional claim. The amendment was made, & deft. increased his tender to $4,000, which was accepted:—*Held:* (1) deft. should in any event have the costs of & consequent upon the amendment granted at the trial; (2) as to the accepted tender, the increased tender must be regarded as having been made & accepted on Mar. 17, & all the costs subsequent to that tender should be borne by pltf.; (3) the circumstances were not quite sufficient to deprive pltf. of costs before tender.—THE PASCIENSA *v.* THE GRIFF, [1925] 2 W. W. R. 676.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.

sb. *Plaintiff resident out of jurisdiction—Foreign ship.*]—Where pltf. is resident out of the jurisdiction & his ship is a foreign one, security for costs may be ordered, even at an advanced stage of the action & though the delaying in applying therefor is unaccounted for, in the absence of any prejudice to the other side occasioned by such delay.—WRANGELL *v.* THE STEEL SCIENTIST, [1924] 3 D. L. R. 49; [1924] Exch. C. R. 136; 2 W. W. R. 493; 34 B. C. R. 114.—**CAN.**

PART III. SECT. 10, SUB-SECT. 1.—A. (a).

sc. *Examination for discovery—In lieu of interrogatories—When ordered—Use of.*]—While an examination for discovery may be ordered by the judge as a matter of convenience, in place of the delivery of interrogatories, especially where the opposite party is in ignorance of the facts, such examination cannot be read as evidence at the trial.—POINT ANNE QUARRIES *v.* S.S. M. F. WHALEN (1921), 65 D. L. R. 627; 20 Exch. C. R. 453.—**CAN.**

1047a. —— **For disposing fairly of cause—For saving costs.**]—The owners of the steamship *N.*, one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the *N.* & the owners of the other ship, the *S.*, & also by the owners of cargo on the *S.* The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the *S.*, who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the *S.* Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the *S.*; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the *S.* The registrar allowed Nos. 1 & 2, but disallowed Nos. 3 & 4. On appeal by both sides:—*Held:* the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. C., Ord. 31, r. 2, & must be allowed. No. 4 was not pressed.—THE NEDENES (1924), 41 T. L. R. 243.

1062a. —— **Confidential report by master.**]—Defts., the Port of London Authority, arranged with their underwriters that, in all cases of claims for collision in which their vessels were concerned, the management of the claim should be put in the hands of certain solrs. Defts. directed that a report on a printed form headed "Confidential report for the information of the Authority's solr." should be made by the master of the vessel. The report was subsequently passed through various departments in defts.' offices until it reached the solr.'s hands. It was then dealt with by the solr. in the course of his professional conduct. A report was made in these circumstances by the master of a vessel belonging to defts. in respect of a collision with pltfs.' vessel. Pltfs. claimed to have this report produced to them:—*Held:* the report having been obtained for the solr., in the sense of being procured as materials upon which professional advice should be taken in proceedings pending or threatened or anticipated, it was privileged from production.—THE HOPPER NO. 13, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

Annotation:—**Distd.** The City of Baroda (1926), 134 L. T. 576.

1062b. —— **Officers' reports.**]—Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery:—*Held:* (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—THE CITY OF BARODA (1926), 134 L. T. 576; 70 Sol. Jo. 1044; 17 Asp. M. L. C. 27.

1114. *Add. Annotation:*—**Mentd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1114a. —— **Damage due to collision.**]—In an action of damage by collision the *onus* of proving that damage directly flows from deft.'s negligence causing the collision is on pltf.; & the dicta in *The Mellona* (1847), 3 Wm. Rob. 7, 13; *The Pensher* (1857), Sw. 211, & similar cases, to the effect that where damage follows a collision the presumption is that the damage is the result of the collision, unless deft. proves the contrary, must not be taken as laying down a principle, but as having reference only to the particular circumstances of those cases, where the damage, stranding, so obviously followed on the collision that it *primâ facie* was to be regarded as a consequence of the negligence causing the collision.—THE PALUDINA, [1925] P. 40; 132 L. T. 724; 16 Asp. M. L. C. 453, C. A. *affd. sub nom.* S.S. SINGLETON ABBEY *v.* S.S. PALUDINA, [1927] A. C. 16, H. L.

1119. *Add. Annotation:*—**Mentd.** Melanic S.S. *v.* San Onofre S.S., [1925] A. C. 246.

1152a. Log of defendants' vessel—Right of plaintiffs to put in—After admission of facts by defendants.]—Defts. to an action of salvage by their defence admitted that all pltfs. had rendered salvage services & that the allegations of the facts of such services set out in the respective statements of claim were in substance correct, but they denied that the various inferences sought to be drawn from those facts were accurate or well founded, & that their vessel was ever in any real danger. They also pleaded certain soundings which differed from those pleaded by certain of pltfs. Pltfs. by their reply joined issue upon the defence save in so far as the same consisted of admissions:—*Held:* pltfs. were entitled to put in the logs of defts.' vessel with a view to proving that the ship was in real danger, & also a graphic representation of the soundings based on sketches in defts.' log, but not to call evidence as to the facts, *e.g.* the displacement of certain tugs.—THE WOOLARRA (1921), 38 T. L. R. 160; 66 Sol. Jo. 183.

1152b. Oral evidence dispensed with—Salvage—Amount in dispute small—Discretion of court.]—In a case where salvage services had been requisitioned & the amount in dispute was small, by agreement the case was tried on the pleadings & statements of the witnesses, no oral evidence being called & the

PART III. SECT. 11, SUB-SECT. 1.

sd. *Proof of claim—Right to proceed ex parte—Order for sale of res.*]—PAUL v. THE AMY TURNER, [1922] V. L. R. 40.—**AUS.**

PART III. SECT. 14, SUB-SECT. 3. A.

sf. *Manuscript notes in*—In the circumstances evidence as part of the ship's —THE ANDREW KELLY *v.* THE COMMODORE, [1919] 1 W. W. R. 1039; 19 Exch. C. R. 70; 48 D. L. R. 213.—**CAN.**

sk. *Salvage action—Attendance of master & crew.*]—It is proper to have the master & crew before the ct. in an action for salvage.—JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (1 18 Exch. C. R. 165.—**CAN.**

attendance of the Elder Brethren being dispensed with:—*Held:* the course taken was a mode of procedure useful to the shipping world, & one for which the ct. would endeavour to give proper facilities, the power of the ct. being, of course, discretionary.—THE RIVER FISHER (1923), 39 T. L. R. 233.

1167. Before this case insert "*See, further*, EVIDENCE, Vol. XXII., p. 91."

1196. *Add. Annotations:* — **Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145. **Mentd.** S.S. Mendip Range *v.* Radcliffe, [1921] 1 A. C. 556.

1198a. —— —— **Between assessors advising lower court & appellate court—Duty of appellate court.**]—In a case in which there has been a difference of opinion between the nautical assessors advising the respective cts., the Ct. of Appeal is not bound to pay more attention to the opinion of its own assessors than to that of those who advised the ct. below. The assessors occupy much the same position as do skilled witnesses, & if they differ the ct. must make its own choice. In every case the responsibility is with the ct., which has to make up its mind alike on questions of nautical skill & on the value of the advice given upon them.—AUSTRALIA (OWNERS) *v.* NAUTILUS (OWNERS), THE AUSTRALIA (1926), 95 L. J. P. 145; 135 L. T. 576; 42 T. L. R. 614, H. L.

1199. *Add. Annotation:*—**Consd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1200a. **Presence of — Dispensed with — Salvage action — Amount in dispute small.**] — THE RIVER FISHER, No. 1152b, *ante*.

1201. *Add. Annotations:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145. **Mentd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1204. *Add. Annotation:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1206. *Add. Annotation:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1224. *Add. Annotation:—As to* (2) **Refd.** The Disperser, [1920] P. 228.

1231. *Add. Annotation:*—**Mentd.** The Oranje Nassau, [1921] P. 190.

1237a. —— **Action against two separate parties—One party only held to blame—Costs of plaintiff.**]—(1) A pltf. who, being in reasonable doubt as to which of two parties has been negligent, sues both parties & fails against one, is entitled to add the costs which he has to pay to the successful deft. to his costs against the unsuccessful deft., notwithstanding that the unsuccessful deft. has not put the blame upon the other. But if he brings separate actions, unless he acts reasonably in so doing, he will not be allowed the costs of two actions. (2) Similarly, if one of defts. sets up a counterclaim against pltf. & the other deft. & fails against pltf., he is entitled to recover from deft. against whom he succeeds the costs which he has to pay pltf.—THE SVEIN JARL (1923), 129 L. T. 255; 16 Asp. M. L. C. 159.

1258. *Add. Annotation:*— **Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1261. *Add. Annotation:*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

1262. For "*see* S. C. No. 1266, *post*," read "*see* S. C. No. 131, *ante*."

1265. *Add. Annotation:*—**Mentd.** The Disperser, [1920] P. 228.

1283. *Add. Annotation:*— **Refd.** The Modica, [1926] P. 72.

1284. *Add. Annotation:*—**Consd.** The Modica, [1926] P. 72.

PART III. SECT. 14, SUB-SECT. 4.—A.

1196 iii. —— ——.]—Two ships collided on a very bad night. The collision was caused by the *M.*, which was light, dragging her anchors, & coming down on the *R.*, which was holding to her moorings. When the *M.* was dragging her anchors she had steam up but did not use it, by which failure she omitted to take a reasonable measure which might have avoided the accident. In an action for damages by the *R.* against the *M.* there was uncontradicted evidence to the effect that the steam had not been used because those in charge of the *M.* did not & could not know owing to the darkness & the weather that they were dragging their anchors. The Lord Ordinary, without expressing any opinion as to whether he credited that evidence or not, accepted an opinion expressed by the nautical assessor to the effect that it would not have been difficult for those on the *M.* to know that they were dragging their anchors: —*Held:* it was for the Lord Ordinary & not for the nautical assessor to pronounce upon the trustworthiness of that evidence, & to say whether or not the master of the *M.* ought to have known when his anchor began to drag, &, on the ground that the evidence did not establish the fault, the *M.* assoilzied.—CAMBO SHIP CO., LTD. (ROSSETTI (OWNERS))

S. C. 26; 57 Sc. L. R. 59.—**SCOT.**

1201 iii. ——.]—*Held:* evidence of with water in a lock without any steamer being in it was of the nature of expert evidence, & as the ct. had the assistance of a nautical assessor to advise upon any matters requiring nautical or other professional knowledge, such expert evidence was inadmissible. FRASER S.S. AZTEC (1920), 20 Exch. C. R. 39. **CAN.**

1201 iv. ——.]—In Admlty. — where the ct. has the assistance of nautical assessors, evidence involving questions of nautical skill & experience is not admissible.—PACIFIC STEAM NAVIGATION CO. (BOGOTA (OWNERS)) *v.* ANGLO NEWFOUNDLAND DEVELOPMENT CO., LTD. (ALCONDA (OWNERS)), [1923] S. C. 526; 60 Sc. L. R. 333.—**SCOT.**

sl. *Duty of judge to keep note of questions submitted to & answers given*

Act, 1894 (c. 40), s. 3.—S.S. ROWAN *v.* S.S. CLAN MALCOLM, S. C. 317.—**SCOT.**

PART III. SECT. 16, SUB-SECT. 3.—A.

sm. *Expenses of bail bond—Not recoverable as costs.*]—The expense of a bail bond incurred by an arrestee in order to liberate his ship, which had been arrested as a preliminary to an unsuccessful action *in rem*, cannot be charged against the opposite party, such expense not being of the expenses of process.—ELLERMANS WILSON LINE, LTD. *v.* NORTHERN LIGHTHOUSES COMRS. (1920), 58 Sc. L. R. 29.—**SCOT.**

sn. *Awarded to salvors.*]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her owners.—HATTON *v.* AKT. DURBAN HANSEN, [1919] S. C. 151; 56 Sc. L. R. 100.—**SCOT.**

PART III. SECT. 16, SUB-SECT. 4.—A.

1279 i. *Inevitable accident—Costs follow event.*]—The rule as to costs is the same in the Exchequer Ct. of Canada in Admlty. as it is in the Admlty. Div. of the High Ct. in England, & costs follow the event, even in cases of inevitable accident, where no special circumstances require a departure from such rule.—THE JESSIE MAC *v.* THE SEA LION, [1919] 2 W. W. R. 411.—**CAN.**

1283 iii. —— ——.]—Where two vessels came into collision & both vessels were held to blame, no were granted to either party.— THE ARGYLLSHIRE, [1922] St. R. 186.—**AUS.**

1283 iv. —— —— —.]—Where the ct. found that both parties were to blame:—*Held:* each delinquent bear his own costs.—B. W. B. TION CO. *v.* THE KILTUISH, BARNET (1922), 67 D. — [1922] W. W. R. 959.—**CAN.**

1284a. —— —— —— ——.] — Although it has been the practice since the above Act to make no order as to costs in collision cases in which both vessels have been held to blame in unequal degrees, the ct. must be guided by the circumstances in each case. In a proper case it will feel itself at liberty to give to the party which is held to blame in the smaller degree such a proportion of that party's costs as on the particular facts appears just.—THE MODICA, [1926] P. 72; 95 L. J. P. 100; 135 L. T. 61; 17 Asp. M. L. C. 30.

1286. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1286a. **Neither to blame—Delay in commencing proceedings—Costs of claim to defendants—Costs of counterclaim to plaintiffs.**]—Pltfs. & defts.' vessels, navigating without lights in accordance with Admlty. directions, came into collision & both received damage. The ct. held that there was no negligence on the part of either vessel, & gave judgment for defts. on the claim & for pltfs. on the counterclaim. On the question of costs :—*Held :* as nearly eighteen months had elapsed before pltfs. commenced proceedings, during which time defts. had taken no steps to recover their damages from pltfs., it appeared that there would have been no litigation if pltfs. had not issued their writ, &, therefore, there must be judgment for defts. on the claim with costs, & for pltfs. with costs on the counterclaim, & not, as contended by pltfs., no costs on either side.—THE CARDIFF HALL, [1918] P. 56; 87 L. J. P. 113; 119 L. T. 156; 14 Asp. M. L. C. 328.

1297. *Add. Annotation :*—**Mentd.** The Penrith Castle, [1918] P. 142.

1298a. —— —— **Unsuccessful counterclaim.**]—THE SVEIN JARL, No. 1237a, *ante.*

1299. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1309. *Add. Annotation :*— **Refd.** The Modica, [1926] P. 72.

1332. *Add. Annotation :*—**Mentd.** Melanie S.S. *v.* San Onofre S.S., [1925] A. C. 246.

1379. *Add. Annotation :*—**Mentd.** Bradley *v.* Newsom, [1919] A. C. 16.

1405a. —— —— —— **Expert evidence.**]—On a reference to assess the damage arising out of a collision the registrar & merchants are not bound to accept the opinions of experts, even though they be all one way, but are entitled to test those opinions by their own experience & bring their own judgment to bear upon the evidence.—THE ST. (1922), 39 T. L. R.

1413. *Add. Annotation :*—**Refd.** The King [1918] P. 344.

1418. *Add. Annotation :*—**Mentd.** Sheppy Glue & Chemical Works *v.* Medway (River) Conservators (1926), 24 L. G. R. 157.

1423. *Add. Annotation :*—**Mentd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1428. *Add. Citations :*—Brown. & Lush. 436; 34 L. J. P. M. & A. 113; 12 L. T. 619; 2 Mar. L. C. 221.
Add. Annotations :—**Consd.** The Thuringia (1871), 41 L. J. Adm. 20. **Refd.** The Kingsway, [1918] P. 344.

1433. *Add. Annotations :*—**Refd.** The Kingsway, [1918] P. 344; *Re* Mersey Docks & Admiralty Comrs., [1920] 3 K. B. 223; Admiralty Comrs. *v.* S.S. Valeria, [1922] 2 A. C. 242; Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655. **Mentd.** The Chekiang, [1925] P. 80.

1439. *Citation :*—For "[1916] A. C. 38," read "[1917] A. C. 38."
Add. Annotations :—**Mentd.** Bradford Corpn. *v.* Webster, [1920] 2 K. B. 135; Baker *v.* Dalgleish S.S. Co., [1922] 1 K. B. 361; The Molière (1924), 41 T. L. R. 154.

1452. *Add. Annotation :*—*As to* (1) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1472. *Add. Annotation :*—**Mentd.** The Kingsway, [1918] P. 344.

1478. *Add. Annotation :*—**Refd.** The Glenfinlas, [1918] P. 363, n.

1482. *Add. Annotations :*—**Refd.** The Rosalind (1920), 90 L. J. P. 126. **Mentd.** The Joannis Vatis (No. 2), [1922] P. 213.

1483a. ——.]—While on hire by the Admlty. a steam trawler was sunk through a collision with the *R.* The value of the trawler was agreed between the parties, but the Admlty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the *R.* contended that interest was only payable from the date when the Admlty. paid the value of the trawler to her owners :—*Held :* under the Admlty. rule a bailee in possession was entitled to recover from a wrongdoer

PART III. SECT. 16, SUB-SECT. 5. A. (a).

—In a suit claiming for salvage services rendered, the n was excessive & the case was such as to warrant a small award only. The ct. made an award of £25 in favour of pltfs., & ordered defts. to pay the costs of the suit. On a subsequent application for directions, the ct. refused to exercise its discretion & to make a special order for costs.—STUART *v.* COLUMBIA RIVER (1921), 21 S. R. N. S. W. 674.—**AUS.**

iii. —— ——.]—Salvors ar- a ship against which they were amounting to £47,500, to release the ship upon obtaining security to the of £37,500. The obtained decree for £4,1 , with modified t defenders, but they were found liable in the expense incurred by defenders in obtaining security in excess of £8,000 :—*Held :* the arresters were rightly found liable for the expense of obtaining security in excess of £8,000.—ST. CLAIR *v.* AUDNEY, [1922] S. C. 85.—**SCOT.**

so. *Costs of arrest.*]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the due, they were allowed to the expenses of arresting the from her owners.—HATTON *v* AKT. DURBAN HANSEN, [1919] S. C 154; 56 Sc. L. R. 100.—**SCOT.**

PART III. SECT. 17, SUB-SECT. C. (c).

1437 i. *Correction of report*

VICKERS CO., LTD 1919), 18 C R. 210; 44 . R.

PART III. SECT. 18, SUB-SECT. 2

1480 i. *Awarded from date of loss.*]—Interest in Admlty. cases will be calculated on the damages allowed from the date of the collision; & on payments made in respect of wages, & payments made by reason of the collision, from the dates of such payments.—CANADIAN DREDGING CO. *v.* NORTHERN NAVIGATION CO. (ONT.), [1924] Exch. C. R. 163.—**CAN.**

sp. *Work done—, bill.*]—In the Admlty. Ct., in an action to recover for work done & material supplied, the ct. will allow interest from the time of rendering of the bill after completion, in the absence of legal excuse for non-payment.—WINSLOW MARINE RY. & SHIPBUILDING CO. *v.* THE PACIFICO, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; 1 W. W. R. 930; 34 B. C. R. 1.—**CAN.**

a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date; but, inasmuch as there was an agreement between the parties that defts. should pay what the Admlty. had to pay to the owners of the trawler, interest on that payment only ran from the date of payment. —THE ROSALIND (1920), 90 L. J. P. 126; 37 T. L. R. 116.

1484. *Add. Annotation:*—**Reld.** The Joannis Vatis (No. 2), [1922] P. 213.

1489. *Add. Annotation:*—*Generally*, **Mentd.** The Joannis Vatis (No. 2), [1922] P. 213.

1489a. Claim by foreign Government.]—(1) By Finnish law 2½ per cent. of the sale price of a Finnish vessel sold out of Finnish nationality is taken by the Finnish Govt.:—*Held:* the Finnish Govt. had no claim upon the proceeds of sale of a Finnish ship sold by the marshal under the powers of the ct. in a default action *in rem*.

(2) A party moving for payment out in a default action *in rem* must give notice to all persons who have intervened or entered *caveats*, & if persons wish to resist an application for payment out they must intervene or enter *caveats*, otherwise they are not entitled to be heard.—THE EVA, [1921] P. 454; 91 L. J. P. 17; 126 L. T. 223; 37 T. L. R. 920; 15 Asp. M. L. C. 424.

1492a. —— After postponement—Decrease in value of ship—Liability of intervener causing postponement to give further security.]—In a mtge. action *in rem* pltfs., mtgees., in Jan., 1925, recovered judgment by default condemning the ship & ordering her sale by the marshal. Thereupon certain charterers, to whom the mtgors. had chartered the ship for a term of years, intervened, claiming a declaration that the charterparty was binding on the mtgees.; & by an order of Mar. 3 the sale of the ship stood over pending the trial of the issue, upon the interveners giving security in an amount satisfactory to the registrar for loss arising from delay & any loss on sale due to a fall in shipping values. On July 15 the ct. gave judgment that pltfs. were not bound by the charterparty, that they were entitled to the judgment they had obtained, & that the costs of & occasioned by the intervention should be paid by the interveners. On Oct. 14 the ship was sold by the marshal for £20,000 less than she had been valued at nine months previously. Pltfs. took out a summons for further security:—*Held:* although judgment had been given against the interveners & they were not appealing against that decision, the matter was still at large, as they were contesting pltfs.' claims before the registrar, & the interveners could be ordered to give further security in respect of possible loss of capital & interest & for the marshal's expenses; the case must be referred to the registrar to find what amount should be given & what was the amount of pltfs.' damages under each head.—THE LORD STRATHCONA (No. 2), [1926] P. 18; 95 L. J. P. 168; 134 L. T. 511; 17 Asp. M. L. C. 24.

1493. *Add. Annotations:*—**Consd.** The Kronprinz Olav, [1921] P. 52. **Reld.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1493a. —— Unascertained liability—Right of court to delay distribution.]—THE KRONPRINZ OLAV, No. 1551a, *post*.

1495. *Add. Annotation:*—**Mentd.** The Mogileff, [1921] P. 236.

1497a. —— Motion for payment in default action—Necessity for notice.]—THE EVA, No. 1489a, *ante*.

1497b. —— Damage to ship whilst under arrest—Payment of damages into court—Cross-claim for damages for breach of charterparty.]—A vessel whilst under arrest in a necessaries action was damaged by the negligent navigation of another vessel belonging to a party who had recovered judgment for damages for breach of charterparty in an action in the county ct. Liability for the damage to the extent of £21 12*s*. was admitted. On a motion by pltfs. in the necessaries action for payment out of the proceeds, the owners of the vessel which had caused the damage claimed to deduct £21 12*s*. by way of set-off for such damage from their claim in respect of the judgment recovered in the county ct.:—*Held:* claimants could not credit themselves with £21 12*s*., but must pay that sum into the fund in ct.—THE MAGGIE A. (1923). 155 L. T. Jo. 191.

1499. *Add. Annotations:*—*As to* (2) **Reld.** The Joannis Vatis (No. 2), [1922] P. 213. *Generally*, **Mentd.** The Llandovery Castle, [1920] P. 119; The Tervaete, [1922] P. 259; The Jupiter, [1924] P. 236.

1500. *Add. Annotations:*—*As to* (2) **Reld.** The Joannis Vatis (No. 2), [1922] P. 213. *Generally*, **Mentd.** The Llandovery Castle, [1920] P. 119; The Jupiter, [1924] P. 236.

1501. *Add. Annotation:*—**Reld.** The Joannis Vatis (No. 2), [1922] P. 213.

1502. *Add. Annotation:*—**Reld.** The Joannis Vatis (No. 2), [1922] P. 213.

1503. *Add. Annotation:*—**Mentd.** The Joannis Vatis (No. 2), [1922] P. 213.

1504. *Add. Annotations:*—**N.F.** The Volant (1812), 1 Wm. Rob. 383. **Consd.** The Mary Caroline (1848), 6 Notes of Cases, 536. **Reld.** The Mellona (1818), 3 Wm. Rob. 16; The Benares (1850), 14 Jur. 581; The Milan (1861), 5 L. T. 590.

1507. *Add. Annotation:*—**Reld.** The Joannis Vatis (No. 2), [1922] P. 213.

1508. *Add. Annotation:*—**Reld.** The Joannis Vatis (No. 2), [1922] P. 213.

1520a. —— Measure of compensation.]—While it has always been the practice, owing to the nature of their calling, to allow seaf[illegible] to be detained on shore to

:—*Held:* the application be adjourned & published in & Vancouver by notice ment for one month, the to be posted in the registry & s upon the collector of customs & American Consul at Vancouver.— SPEEDWAY (1925), 35 B. C. R. 3. CAN.

PART III. SECT. 18, SUB-SECT. 3.

st. *Sale of ship—By marshal—Not licensed as auctioneer—Right to fees.*]—The marshal, though not licensed as an auctioneer, is entitled to a double fee on the gross proceeds in selling a vessel at auction by order of ct.—HERNANDEZ *v.* THE BAMFIELD (1921), 21 Exch. C. R. 166; 30 B. C. R. 161; [1921] 3 W. W. R. 69.—CAN.

PART III. SECT. 18, SUB-SECT. 4.

1495 iv. —— *Claim by assignee of foreign shipowner.*]—After sale of a ship & payment of all costs & charges there remained in ct. a balance to the credit of the ship. On an application for payment out by a resident of Vancouver, who claimed to be the assignee of the reputed owner who lived in

evidence, & to allow them reasonable compensation for their detention, it is a question for the taxing master whether a party who seeks to charge his opponent with the cost of detaining an expensive witness has acted reasonably in incurring the expense or whether he ought not to have examined the witness on commission.

A taxing master should bear in mind that a witness duly summoned is bound to attend, & the witness is not entitled to receive, as the measure of his compensation, the exact sum he may prove he has lost by reason of the detention. He is, however, entitled to some compensation, & not merely to the conduct money given him with his

the wages he is earning may afford an indication of what is fair compensation. But although this is correct in the case of seamen, as regards captains & other officers, as in the case of professional witnesses, their earnings cannot be taken as a fair criterion on which to base the allowance. THE IBIS VI, P. 2 L. J. P. 289; 125 L. T 378; 37 R. 65 Sol. Jo. 514; 15 Asp. M. L. C. 237, C. A.

1520b. Substitute for witness. The expenses of a substitute to join a vessel from which a witness is necessarily taken are not allowable on taxation as a matter of course.—THE ASSILIA, [1926] P. 180; 95 L. J. P. 109 35 L. T. 671; 42 T. L. R. 551.

1526 *Add. Annotation:* **Expld.** The Ibis VI, [1921] P. 255.

1527. *Add. Annotation* **Expld.** The Ibis VI, [1921] P. 255.

1536a. "To persons claiming to have sustained damage" Appearance at trial—Right to be heard.—In an action of limitation of liability pltfs., the owners of the steam tug *H.*, addressed their writ in the usual manner: "To the owners of the steamship *D.* & all other persons claiming to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.* on the morning of Jan. 2, 1921." Notice of the action was inserted in the press. At the trial the owners of the steamship *T.*, who claimed to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.*, appeared by counsel & claimed to be heard. The owners of the *T.* had commenced an action against pltfs., but had taken no step other than appearance at the trial in the limitation suit: *Held:* the writ made the owners of the *T.* parties to the action, & was served upon them by insertion in the press.—CORY LIGHTERAGE, LTD. *v.* DALTON (OWNERS), THE HARLOW (1922), 153 L. T. Jo. 121.

1538. *Add. Citation:* 4 Asp. M. L. C. 2 n.
Add. Annotation **Refd.** The Vigilant, [1921] P. 312.

a. Waiver of. In an action of limitation of liability under M. S. Act, 1894 (c. 60), s. 503, pltfs. did not file the usual affidavit verifying their statement of claim. The owners & crew of the vessel injured in the collision, in respect of which judgment had been given against pltfs. in the previous action, & some cargo owners appeared by counsel at the trial & consented to a decree of limitation:—*Held:* a decree might be granted without requiring pltf. to file the usual affidavit.—THE COIMBRA (1923), 130 L. T. 512; 16 Asp. M. L. C. 288.

1542. *Add. Annotation:*—**Mentd.** Brierley *v.* Brierley & Williams (1918), 34 T. L. R. 458.

1544. *Add. Annotations:*—*As to* (2) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345. **Mentd.** The Kronprinz Olav, [1921] P. 52; The Coaster (1922), 91 L. J. P. 145.

1546. *Add. Annotation:*—**Mentd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

1547. *Add. Annotation:*—*As to* (2) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1548. *Add. Annotations:*—*As to* (2) **Consd.** The Coaster (1922), 91 L. J. P. 145. *Generally,* **Mentd.** The Kronprinz Olav, [1921] P. 52.

—F in an action of limitation of liability, who has paid to claimants a sum in satisfaction of a liability arising out of the collision, is under M. S. Act, 1894 (c. 60), s. 503, entitled, in respect of such payment, to share ratably with other claimants in the distribution of the limitation fund, even though such payment has been enforced by action in a foreign ct.—THE COASTER (1922), 91 L. J. P. 145; 127 L. T. 153; 38 T. L. R. 511; 15 Asp. M. L. C. 560.

1551a. —— Unascertained liability — Right of plaintiffs in limitation suit to claim against fund.—In Feb. 1917, two Norwegian vessels, the *C.* & the *O.*, came into collision & the *C.* sank. In Mar. 1917, the owners of the cargo laden on board the *C.* began an action against the owners of the *O.* in the Admlty. Ct. The action was heard in May, 1919, when both vessels were pronounced to blame, & accordingly it was adjudged that pltfs. were entitled to receive a moiety of the amount of their damage from defts. Thereupon defts., the owners of the *O.*, commenced a limitation action against the owners of the *C.*, the owners of her cargo, & all persons claiming to have received damage by reason of the collision. This action was heard in Feb. 1920, when a decree was pronounced limiting the liability of the owners of the *O.* to £8 per ton on the registered tonnage of the *O.* calculated in accordance with M. S. Act, 1894 (c. 60). The decree provided that all claims were to be brought in within three months & that claims not so brought in would be excluded from sharing in the limitation fund. Claims were filed by the owners of the cargo on the *C.*, but although the owners of the *C.* entered an appearance they took no further steps in the limitation proceedings. Meanwhile, however, in Feb. 1919, the owners of the *C.* had commenced an action in Norway against the owners of the *O.* & in June, 1920, when the reference was held in the limitation proceedings & the registrar made his report, the trial of the Norwegian action was still pending. The owners of the *O.* accordingly took out a summons asking that the report be not confirmed & that they might have leave to file a claim against the fund in respect of any liability they might incur under the Norwegian proceedings. The judge declined to postpone the distribution of the fund & dismissed the summons. Pltfs., the owners of the *O.*, appealed:—*Held:* (1) pltfs. had

no absolute right under the limitation sects. of M. S. Act, 1894 (c. 60), to have the distribution of the fund stayed & to bring forward a claim when ascertained; (2) limitation proceedings do not contemplate claims by pltfs., & the owners of the *O.* could not file a claim against the fund in their own right; (3) had an application been made in proper form the ct. would have had a discretion to extend the time before distributing the fund, in order to allow pltfs. to ascertain their liability under the pending Norwegian judgment & to apply to the ct. to adjust the distribution of the fund so that pltfs. might obtain credit for the amount payable under the Norwegian judgment; but, having regard to the lapse of time & to the fact that limitation proceedings contemplate that claims shall be brought in promptly & the distribution of the fund not be unreasonably delayed, the ct. had rightly exercised its discretion in refusing to postpone the distribution of the fund.—THE KRONPRINZ OLAV, [1921] P. 52; 90 L. J. P. 398; 125 L. T. 684; 15 Asp. M. L. C. 312, C. A.

Annotation:—*As to* (3) **Consd.** The Coaster (1922), 91 L. J. P. 1.

1553a. —— ——.] —The usual rule by which the successful pltfs. in a limitation suit are required to pay the costs should not be departed from, notwithstanding that the litigation has been much more expensive than is usual in limitation actions by reason of the issues raised by defts. Nor ought pltfs. to recover their costs of giving bail in excess of the amount of their statutory liability.—CHARLOTTE v. THEORY (LATE) (OWNERS), THE CHARLOTTE (1921), L. T. Jo.

Part IV.—Appeals.

1581. *Citations:*—For "(1878)" read "(1877)." *Add. Annotation:* — **Mentd.** Wickins *v.* Wickins, [1918] P. 265.

1613a. —— **Appeal out of time—Discretion of court to extend time—Objection that appeal out of time not taken promptly.**]—Where an appeal from a decision confirming the report of the registrar & merchants in an action of damage by collision was out of time:—*Held:* as the objection that the appeal was out of time had not been taken at the earliest possible moment, the ct. would, in its discretion, hear the appeal.—THE OTTOKAR, [1921] W. N. 266, C.A.

Annotation:—**Apld.** London S.S. & Trading Corpn. *v.* Russian Volunteer Fleet (1926), 135 L. T. 607.

1619. *Add. Annotation:*—**Mentd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1620a. —— —— **Advice to be in writing.**]—Where the Ct. of Appeal sits with nautical assessors it is convenient that the advice of the assessors should be elicited by written questions, so that these questions & the answers may be available in the House of Lords.—MELANIE (OWNERS) *v.* SAN ONOFRE (OWNERS) (1919), 35 T. L. R. 507; 63 Sol. Jo. 552; *subsequent proceedings*, [1925] A. C. 216, H. L.

1622. *Add. Annotation:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1627. *Add. Annotations:*—**Mentd.** The Kingsway, [1918] P. 344; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

1630. *Add. Annotation:*—**Mentd.** The Joannis Vatis (No. 2), [1922] P. 213.

1638. *Add.* **Mentd.** The Sutherland, [1918] P. 332; The Kenora, [1921] P. 90.

1640. *Add. Annotation:* **Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1642. *Add. Annotation:* **Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1644a. Decision of court below not interfered with —Joinder of plaintiffs convenient & within rules locally applicable Action in rem.]—MARLBOROUGH HILL, SHIP *v.* COWAN & SONS, No. 541a, *ante*.

1646. *Add. Annotations:* **Apld.** The Kingsway, [1918] P. 344. **Refd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

1648. *Add. Annotations:* **Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153. **Mentd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1655a. —— **Failure to consider important matter —Maritime Conventions Act, 1911 (c. 57).**]—Where a judge sitting in Admlty. has apportioned the blame between two wrongdoing vessels in accordance with sect. 1 of the above Act, the Ct. of Appeal, if it finds that he has not taken into consideration at all an obviously important matter, is bound to review his decision as to the apportionment of blame in the same way as it would if it had differed with him on the facts & had found that one of the vessels was more blame-

PART IV. SECT. 4, SUB-SECT. 1.

ss. *In estimating weight of evidence—Witnesses not heard in court below.*]—Where the trial judge did not hear or see the witnesses, an appellate ct. is as competent to appreciate the facts & estimate the credibility of the evidence as the ct. of first instance.—CANADIAN VICKERS CO., LTD. *v.* THE SUSQUEHANNA (1919), 19 Exch. C. R. 116; 48 D. L. R. 461.—CAN.

in court below.]
—Where the local j e in Admlty. has seen & heard the nesses & was assisted by two as- e Ex- s a ct. of , should not interfere with the of the judge of first instance ards pure questions of fact, it is firmly of the opinion that

FRASER *v.* S.S. AZTEC (1920), 20 Exch. C. R. 39; 56 D. L. R. 440; (1921), 20 Exch. C. R. 150; 63 D. L. R. 513.—CAN.

PART IV. SECT. 4, SUB-SECT. 3.

1660 ii. — —.] The of s reward is in the n of t is excessive, ought not to rfere.—SHIP SS A *v.* MACDONA 1923] Exch. C. R. 177; *affd.*, [ ] Exch. C. R. 1 CAN.

worthy as regards matters in respect of which she was not held to blame in the ct. below.—THE CLARA CAMUS (1925), 134 L. T. 50; 16 Asp. M. L. C. 570, C. A.

1666. *Add. Annotation :*—**Mentd.** Bradley *v.* Newsom, [1919] A. C. 16.

1674. *Add. Annotations :*—**Mentd.** The Clan Sutherland, [1918] P. 332; The Kenora, [1921] P. 90.

1682. *Add. Annotation :*—**Reld.** The Modica, [1926] P. 72.

1691. *Add. Annotation :*—*As to* (1) **Reld.** The Modica, [1926] P. 72.

1694. *Citations :*—For "P. D. 218" read "8 P. D. 218."
Add. Annotation :—**Reld.** The Modica, [1926] P. 72.

Part V. Jurisdiction and Practice of other Courts having Admiralty Jurisdiction.

1710. *Add. Citation :*—14 Asp. M. L. C. 21.

1717. *Add. Citations :*—*sub nom. Re* PERFECT *v.* POYNTER, R. *v.* ESSEX COUNTY COURT JUDGE, 53 L. J. Q. B. 423; *sub nom.* R. *v.* ABDY, 32 W. R. 751.

1719. *Add. Annotation :*—**Mentd.** Leopold Walford (London) *v.* Les Affreteurs Reunis Soc. Anon., [1918] 2 K. B. 498.

1722. *Add. Annotation :*—**Apld.** The Norfolk Coast (1922), 153 L. T. Jo. 450.

1723a. —— ——.]—A collision took place in the Thames between the dumb barge *H.* & the steamer *C.* Proceedings were commenced by the owners of *H.* in the High Ct., but the action was subsequently settled, the owners of the *H.* accepting £48 10*s.* in satisfaction of their claim. Defts. objected to payment of pltfs.' costs on the High Ct. scale, on the ground that the matter was within the Admlty. jurisdiction of the county ct., where the action should have been commenced:—*Held :* pltfs. were warranted in commencing proceedings in the High Ct. & were entitled to have their costs taxed on the High Ct. scale.—THE NORFOLK COAST (1922), 153 L. T. Jo. 450.

1732. *Add. Annotation :*—**Apld.** The Norfolk Coast (1922), 153 L. T. Jo. 450.

1740. *Add. Annotation :*—**Mentd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1745. *Add. Annotation :*—**Mentd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1750. *Add. Annotation :*—**Reld.** The British Trade, [1924] P. 104.

1751. *Add. Annotation :*—*As to* (2) **Reld.** The Ambatielos, The Cephalonia, [1923] P. 68.

1752. *Add. Annotation :*—**Reld.** The Ambatielos, The Cephalonia, [1923] P. 68.

1766. *Add. Annotation :*—**Reld.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1769. *Add. Annotation :*—*Generally*, **Mentd.** The Ambatielos, The Cephalonia, [1923] P. 68.

1793. *Add. Annotation :*—**Mentd.** The Tervaete, [1922] P. 259.

1796. *Add. Annotation :*—*Generally*, **Mentd.** The British Trade, [1924] P. 104.

PART V. SECT. 7, SUB-SECT. 1.

a l. —— *Necessaries.*]—A claim for necessaries can be enforced in a colonial admiralty ct. by a suit *in rem.*—THE HEIWA MARU *v.* BIRD & CO. (1923), J. L. R. 1 Ran. 78.—IND.

PART V. SECT. 7, SUB-SECT. 2.

the Exch. Ct. of Canada on its Admlty. side sits in Canada, it administers the maritime law of England in like manner as if the cause of action were being tried & disposed of in the English Ct. of Admlty.—ROBILLARD *v.* THE ST. ROCH & CHARLAND (1921), 62 D. L. R. 145; 21 Exch. C. R. 132.—CAN.

c (p. 253) ll. —— —— *Necessaries—not "under arrest."*]—Where a ship not under arrest & its owner is domiciled in Canada, the Exch. Ct. of Canada has no jurisdiction over an action for repairs or necessaries supplied to the ship.—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—CAN.

Subject to the exceptions mentioned in Canada Shipping Act, 1906 (c. 113), s. 191, in an action for seaman's wages
on a ship registered in Canada,
the amount of recovery is less,
h the amount sued on is more
than $200, the Exch. Ct. in Admlty. is without jurisdiction.—KOUAME *v.* S.S. MAPLECOURT (1921), 21 Exch. C. R. 226.—CAN.

sc. —— —— *Stevedores' claims.*]—Pltfs., stevedores, entered into a contract to load a vessel on its arrival at Montreal. The captain of the ship refused to allow them to load the vessel, & thereupon the ship was arrested on a claim for damages arising out of breach of the contract:—*Held :* (1) the admlty. jurisdiction of the ct. was no greater than the admlty. jurisdiction of the High Ct. of England; (2) upon the facts the ct. had no jurisdiction to entertain the action.—WOLFE *v.* S.S. CLEARPOOL (1920), 20 Exch. C. R. 153.—CAN.

—— ——.]—The Exch. Ct. of Canada has jurisdiction over stevedores claims.—J. P. FERNS *v.* THE INGELBY, [1923] Exch. C. R. 208.—CAN.

sf. —

for leave to appeal—Interjudgment.]—The Exch. Ct., sitting in appeal, cannot entertain an appeal from an interlocutory decree without leave having previously been obtained from either the local judge in admlty. or from the Judge of the Exch. Ct.—JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (No. 1) (1918), 17 Exch. C. R. 155.—CAN.

Where by statute an a
given to the Exch. Ct. of Can a from an interlocutory judgment or upon permission so to appeal having been previously obtained, & when no such permission has been obtained, the ct. has no jurisdiction to hear the appeal.

(2) The judgment of a local judge of admlty. confirming a taxation by the district registrar of the marshal's bill for services, etc., relating to the care of the ship whilst in his custody is an interlocutory judgment.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 68 D. L. R. 729; 21 Exch. C. R. 351.—CAN.

sl. —— —— —— *Appeal as to costs.*]—*Semble :* appeals involving merely a question of costs should not be entertained, more particularly when the appeal is from the decision of the trial judge confirming the findings of the taxing master, or when the matter is only one of *quantum* involving the exercise of his discretion.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 68 D. L. R. 729; 21 Exch. C. R. 351.—CAN.

—— —— *Transfer of action from one admiralty district to another.*]—*See* cases t l, w l, *post.*

pellate jurisdiction—Questions of]
Where the local judge in admlty. has seen & heard the witnesses & was assisted by two assessors, the Exch. Ct. of Canada, sitting as a ct. of appeal, should not interfere with the decision of the judge of first instance as regards pure questions of fact, unless it is

firmly of opinion that such decision is erroneous.—FRASER v. S.S. AZTEC (1920), 20 Exch. C. R. 39; 56 D. L. R. 440; (1921), 20 Exch. C. R. 450; 63 D. L. R. 543.—CAN.

sn. —— —— —— *Dismissal of appeal for want of prosecution.*]—There is no distinction in principle to be drawn between the inherent authority of the ct. to order the dismissal of a case on appeal for want of prosecution, & the dismissal of one at first instance.—McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.) (1922), 70 D. L. R. 16; 21 Exch. C. R. 426.—CAN.

ti. —— —— *Transfer of action—Convenience.*]—(1) It is in the discretion of the ct. to order the removal of a suit from one district to another upon cause shown.

(2) The determining factor in granting such an order is that of general convenience to the parties.—JOHNSON v. THE CHARLES S. NEFF (1918), 21 Exch. C. R. 171.—CAN.

wl. —.]—On the ground of comity, the Exch. Ct. will not entertain an application for the transfer of a cause from one admlty. district to another without the application having first been made before the local judge.—JOHNSON & MACKAY v. S.S. CHARLES S. NEFF (NO. 2) (1918), 17 Exch. C. R. 158.—CAN.

PART V. SECT. 7, SUB-SECT. 3.

so. *High Court.*]—The High Ct. is a colonial ct. of Admlty. & has jurisdiction in an action by consignees against a ship, the owner of which is not domiciled in Australia, for delivery in a damaged condition of goods for which the consignees hold a bill of lading issued by the master of the ship.—SHARP (JOHN) & SONS, LTD. v. THE KATHERINE MACKALL (1924), 34 C. L. R. 420.—AUS.

PART V. SECT. 7, SUB-SECT. 5.

of master within jurisdiction.]—If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tort feasor or his goods, & to try an action based upon the tort; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—NOLAN v. S.S. RUSSEL HAVERSIDE, C. P. D. 130.—S. AF.

sp. —— *Action in rem—Necessaries—What law applicable.*]—In a claim *in rem* against the proceeds of a vessel for a sum of money alleged to have been expended for repairs & necessaries in priority to prior mtgees. of the vessel the law to be applied is English admlty. law & not Roman-Dutch Law.—CROOKS & CO. v. AGRICULTURAL CO-OPERATIVE UNION, LTD., [1922] App. D. 423; 42 N. L. R. 216.—S. AF.

AGENCY.

Part I.—The Relation of Agency.

1. *Add. Annotation :*—**Consd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

3. *Add. Annotations :*—**Mentd.** Keen *v.* Mear, [1920] 2 Ch. 574; Jones (Holloway) *v.* [1923] 2 K. B. 117; Prager *v.* , Stamp & Heacock, [1924] 1 K. B.

7. *Annotations :*—**Mentd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777; Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

8. *Add. Annotations :*—**Mentd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423; Taylor *v.* Davies, [1920] A. C. 636; Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B.

14. *Add. Annotation :*—**Mentd.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

16. *Add. Annotations :*—**Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463; Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

17. *Add. Annotation :*—**Mentd.** Folkes *v.* King, [1923] 1 K. B. 282.

19. *Add. Annotation :*—*As to* (2) **Refd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508.

21. *Add. Annotation :*—**Refd.** Taylor *v.* Davies, [1920] A. C. 636.

28. *Add. Annotation :*—**Mentd.** Lamb *v.* Wright, [1921] 1 K. B. 857.

29. *Add. Annotations :*—**Refd.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89. **Mentd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

31. *Add. Annotations :*—**Mentd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Bradford *v.* Price (1923), 92 L. J. K. B. 871.

Part II.—Competency of Parties—Acts which can be done by an Agent.

37. *Add. Annotation :*—**Refd.** Dodd *v.* Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.

40. *Add. Annotation :*—**Refd.** Dodd *v.* Amalgamated Marine Workers' Union, [1921] 1 Ch. 116.

53. *Add. Annotation :*—**Mentd.** L. & N. E. Ry. *v.* Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

68. *Add. Annotations :*—*Generally*, **Refd.** *Re* Ellis, [1925] 1 Ch. 561; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52. **Mentd.** *Re* Lee, *Ex p.* Grunwaldt (1919), 89 L. J. K. B. 364; *Re* Bankruptcy Notice, [1924] 2 Ch. 76.

69. For "**Dramatic Copyright Act, 1888,**" read "**Dramatic Copyright Act, 1833.**"

87. *Add. Annotation :*—**Mentd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626.

88. *Add. Annotation :*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626.

90. *Add. Annotation :*—**Mentd.** Veasey *v.* Beardsley (1924), 23 L. G. R. 118.

91. *Add. Annotation :*—**Mentd.** Cayzer, Irvine *v.* Board of Trade (1925), 95 L. J. K. B. 134.

Part III.—Classes of Agents.

105. *Add. Annotation :*—**Mentd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

127a. ——.]—Pltfs. bought from the first defts. a quantity of seed under a written contract, which stated that the first defts., through the agency of the second defts., acting as *del credere* agents, sold the seed to pltfs. The second defts. were paid a commission by the first defts., & received nothing from pltfs.

PART I.

1 i. ——.] The relation of principal & agent only arises when the person called the agent has authority expressed or implied to act on of the other called the principal, consents so to act.—SMITLE *v.* SLATTARO (1919), 21 W. A. L. R. 19.—**AUS.**

2 i. ——.]—*Held :* in the circumstances despite the designation of deft. as agent by pltf., the real relationship between the parties was that of purchaser & seller.—BRITNEFORD *v.* DIXON, [1918] E. D. L. 156.—**S. AF.**

aa. *Agent distinguished from Joint* The distinction between the position of a joint adventurer & an ordinary agent buying for his with the understanding that is to be remunerated for his vices, pointed out.—S *v.* (1924), 55 O. L. R. 28 **CAN.**

a of goods for sale is aut to them at a certain minimum told that whatever amount he obtains above that price will be his commission, the relationship between consignor & consignee is that of principal & agent. —REX GROCERY *v.* HOOS & KEEN, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402; 19 Sask. L. R. 492.—**CAN.**

27 xii. —— ——.]—Defts. gave to pltf. a written order to ship goods from England on account of defts., & pltf. ordered goods from a manufacturer in England to be shipped in performance of this order :—*Held :* the relationship between the parties was that of principal & agent, not of vendor & purchaser.—BULTERS *v.* ROOPE, [1922] N. Z. L. R. 549.—**N.Z.**

27 xiii. —— ——.]—PIESSE *v.* TASMANIAN, ETC. (1919), 15 Tas. L. R. 67. —**AUS.**

PART III.

108 i. *Broker.*]—A broker is an a of a special kind. A broker who approaches a buyer or seller acts in the first instance as agent of the person who employs him, but directly the other party is aware of the fact that he is a broker, he becomes the agent of both parties, not with a plenary power to bind both parties as he chooses, but to communicate between them until they are *ad idem*.—JACOBS LEVITATZ & BRAUDE *v.* KROONSTAD ROLLER MILLS, [1921] O. P. D. 38.—**S. AF.**

The first defts. were unable to deliver the goods. In an action for damages:—*Held:* as the second defts. were not in fact the agents of pltfs. but only of the first defts., & as the mere description of the second defts. as *del credere* agents, without any further words making them *del credere* agents of either party in particular, did not make them agents of pltfs., the action failed as against the second defts.—NOUVELLES HUILERIES ANVERSOISES S. A. *v.* MANN (H. C.) & Co. (1924), 40 T. L. R. 804.

Part IV.—Formation and Evidence of the Contract of Agency.

143. *Add. Annotation:—Generally*, **Mentd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

156. *Add. Annotation:*—**Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590.

157. *Add. Annotations:* **Apld.** Grindell Bass, [1920] 2 Ch. 487. **Refd.** Thirkell *v.* [1919] 2 K. B. 590. **Mentd.** North *v.* [1919] 1 Ch. 378.

164a. Counsel — Signing pleadings.] — B., the owner of freehold premises, agreed to sell them to E., but there was no memorandum in writing to satisfy Stat. Frauds. B. then agreed to sell the premises to G., & a valid contract was executed, which B. did not perform. G. brought an action for specific performance against B., who by her defence signed by counsel pleaded the contract with E. in terms that made the pleading a valid memorandum within the statute. G. added E. as a deft. to the action; & E., by a counterclaim, claimed specific performance of his agreement: *Held:* counsel was the duly authorised agent of B. to sign the pleading & to plead the contract with E., & although the signing of a memorandum within Stat. Frauds was not in the minds of either counsel or client, the pleading, as signed by counsel before E. was a party to the action, was a valid memorandum to satisfy the statute, & E. was entitled to judgment on his counterclaim, & G.'s action against B. must be dismissed.—GRINDELL *v.* BASS, [1920] 2 Ch. 487; 89 L. J. Ch. 591; 124 L. T. 211; 36 T. L. R. 867.

165. *Add. Annotations:* **Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Distd.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

166. *Add. Annotation:* **Refd.** Cohen *v.* Rocho (1926), 95 L. J. K. B. 945.

171. *Add. Annotation:* **Mentd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

PART IV. SECT. 2, SUB-SECT. 1.

149 iii. —— —— *Statute of Alberta*, 1906 (*c.* 27).]—It is merely the terms of the agency agreement, whether they may be meagre or detailed, that must be in writing under the above Act. The price & the other terms of the proposed sale may or may not be mentioned. If they are, in the circumstances, an essential part of the agency agreement they ought to be in writing. But it is a question of interpretation, even since the statute, whether the terms mentioned as those of the proposed sale are intended merely as a basis on which the agent may negotiate or are intended to bind the agent strictly to a sale on the named terms before he can claim his commission.—KING *v.* SCHON, [1918] 3 W. W. R. 892; 44 D. L. R. 111.—**CAN.**

149 iv. —— —— *Real Estate Commission Act, R.S.A.*, 1922 (*c.* s. 2.)—The fact that a written instrument evidencing an agreement for the sale of land does not contain all the terms of the agreement does not prevent it being sufficient to satisfy the proviso to the above sect., if it is one which the ct. will order to be rectified to include the terms agreed on but omitted by mutual mistake, & which when so rectified will be enforceable by the parties thereto subject to such legal or equitable defences available to either of them as the agent who effected the agreement cannot be held accountable for.—HANTON *v.* STEDMAN, [1925] 1 W. W. R. 642. **CAN.**

149 v. —— —— *Auctioneers' Agents' Act*, 1922, *s.* 23—*of agency contract.*]—So long as the relationship of principal & agent in respect of the transaction is evidenced in writing, the mischief aimed at by the above sect. has been duly met & the requirements of the sect. satisfied, & the other terms of the agency contract may be effectively made & effectively varied verbally.—CANNIFFE *v.* HOWIE, [1925] S. R. Q. 121; 19 Q. J. P. 57.—**AUS.**

149 vi. —— —— So long as the relation of principal & agent in respect of the transaction in question has been evidenced in writing, the requirements of the above sect. have been complied with, & any document signed by pltf. at any time before action brought, which evidences the essential fact, the existence of the relationship in respect of the transaction in question, is sufficient to comply with the Act. It is sufficient if the writing manifests a present intention of engaging or appointing the agent in respect of a transaction by any suitable words, whether contained in one document signed by deft., or in several documents, sufficiently interconnected by internal reference, either direct or inferential, one or more of which are signed by deft., manifesting intention on his part.—SK *v.* SYRIMS, [1925] S. R. 19 Q. J. P. 17. **AUS.**

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, *see* Nos. 1661 xiva–1661 xivl, *post.*

g i. —— *Land Agents Act*, 1912—*When applicable.*]—Deft. intimated to pltf. that he had been instructed to sell a property by private sale. Pltf., an accountant, told deft. that he could introduce a probable purchaser, & would do so if deft. would pay pltf. half the commission payable by the owner of the property to deft. in the event of a sale being effected. Deft. agreed, & on the same day pltf. introduced B. to deft. with whom a sale was arranged. Pltf. in his evidence stated that he was not a land agent, & for the preceding five years had had no transactions for the sale of land except the one in question:—*Held:* the arrangement between the parties was not one of a series nor the commencement of a series of but a solitary transaction, & pltf. was not a land agent within the above Act.—COOKE *v.* WALLACE (1914), N. Z. L. R. 1054.—**N.Z.**

g ii. —— .]—Land Agents 1912, s. 13, applies only to persons carrying on land agency as a business, & does not extend to casual agency outside the scope of the agent's business.—CLIFTON *v.* JOHNSTONE, [1921] N. Z. L. R. 35. **N.Z.**

g iii. — *Effect of.*]—The effect of Land Agents Act, 1912, s. 13, is not to make the contract of agency illegal by reason of the want of written authority, but merely to prevent the agent from recovering his commission by action. GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

g iv. — — — *Form of appointment.*] An appointment of a land agent under s. 13 of the above Act must be signed by the principal himself & is not sufficient if signed by an agent on his behalf. BUCHANAN *v.* SAMSON, [1922] N. Z. L. R. 558.—**N.Z.**

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, *see* Nos. 1661 xiva–1661 xivl, *post.*

PART IV. SECT. 3, SUB-SECT. 1.

171 iv. —.]—The *onus* of establishing the authority of an agent is upon the person who seeks to bind the principal. STEVENS *v.* MERCHANTS OF CANADA, [1920] 2 W. W. R. 52; 19 D. L. R. 528 Man. L. R. 46.—**CAN.**

176 v. — — *Claim of pal In possession of third* — If a person other than the owner makes a demand for return of goods in possession of a third party, he should present credentials or some written authority to show that he is acting as agent of the owner. CRAIG *v.* MCCREATH, [1922] 2 W. W. R. 1276.—**CAN.**

176 vi. PLUMB *v.* W. C. MACDON REGISTERED, LATIMER *v.* FOSTER'S CO-O. W. N. CO., LTD.—**CAN.**

177 v. —] If A. has entered

182. *Add. Annotations :—As to* (1) **Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91. *Generally*, **Mentd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

189. *Add. Citation :*—21 J. P. 4.
Add. Annotations :—As to (1) **Consd.** Kemp *v.* [1918] 1 K. B. 228. *As to* (2) **Refd.** es *v.* Dicker, [1923] 2 K. B. 585.

190. *Add. Annotation :—Generally*, **Mentd.** Cohen *v.* Rothfield, [1919] 1 K. B. 410.

192. *Add. Annotations :—As to* (1) **Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1. **Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

196. *Add. Annotations :*—**Distd.** Keeling *v.* Pearl Assce. (1923), 129 L. T. 573. **Consd.** Paxman *v.* Union Assce. Soc. (1923), 39 T. L. R. 424.

203. *Add. Annotation :* **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

210. *Add. Annotation :*—**Mentd.** Yorke *v.* Yorkshire Insce., [1918] 1 K. B. 662.

SECT. 4.—**AGENCY OF NECESSITY** (Vol. I., p. 293).

For "*See* HUSBAND & WIFE; SHIPPING & NAVIGATION," substitute as follows :—

215a. **Extent of doctrine.**]—An agency of necessity can arise in other cases than that of carriers by land or sea or the acceptor of a bill of exchange for the honour of the drawer. Extraordinary circumstances, such as war conditions, which make it impossible for a buyer of goods on behalf of a principal abroad either to despatch them or to communicate with him, would entitle the buyer to sell the goods as an agent of necessity. But in order to establish an agency of necessity the agent must prove that there was an actual & definite commercial necessity for the sale, & that the transaction was *bonâ fide* in the interest of the principal.

Where an agent in London bought skins in 1915 & 1916 to be forwarded to his principal in Roumania as the principal might direct, & in consequence of the occupation of Roumania by the Germans in 1916, the agent was unable to send the skins to his principal or communicate with him, & the agent thereupon sold the skins without authority :—*Held :* the agent had failed to establish agency of necessity because (1) the deterioration of the furs might have been prevented by putting them in cold storage at a comparatively small expense, &, moreover, they had steadily increased in value, & (2) the agent had not acted *bonâ fide* in selling the skins.—PRAGER *v.* BLATSPIEL, STAMP & HEACOCK, LTD., [1924] 1 K. B. 566; 93 L. J. K. B. 410; 130 L. T. 672; 40 T. L. R. 287; 68 Sol. Jo. 460.
See, also, original volume, p. 319, No. 390.

215b. —— **Repayment to agent of necessity.**]—UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

Power to delegate in cases of supervening necessity.]—*See* original volume, pp. 390, 391, Nos. 939–942.

Authority of carrier of goods—Land carrier.]—*See* CARRIERS, Vol. VIII., pp. 26, 35, Nos. 151, 201.

—— **Master of ship.**]—*See* SHIPPING & NAVIGATION.

Authority of wife to pledge husband's credit.]—*See* HUSBAND & WIFE.

Acceptance of bill of exchange for honour of drawer.]—*See* BILLS OF EXCHANGE, Vol. VI., pp. 415, 416.

Part V.—Authority of the Agent.

246. *Add. Annotation :*—**Refd.** Ralli *v.* Compañia Naviera Sota y Aznar, [1920] 2 K. B. 287.

281. *Add. Annotation :*—**Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

into a contract to purchase land it is open to B. to show by parol evidence that A. did so as his agent & to ask for a declaration of that agency.—VASILENAK *v.* VASILENAK, [1921] 1 W. W. R. 889; 57 D. L. R. 37; 16 Alta. L. R. 256.—**CAN.**

177 vi. ——.]—A husband obtained from his wife authority to act on her behalf : *Held :* it was competent to prove the authority by parol evidence. WALKER *v.* HENDRY, [1925] S. C. 855.—**SCOT.**

177 vii. ——.]—Where a contract is entered into by a person in his own name, but as agent of another, if in the contract itself there is no specification or assertion of property the may be proved by parol.—*v.* HEAD, [1925] 3 D. L. R. 17, 57 O. L. R. 38.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.

to contract " ... *on behalf of another.*"]—To say that a man entered into a contract "acting on behalf of another" is to allege in the absence of any qualifying statement, that he entered into it as the agent of that other.—LIND *v.* SPICER BROTHERS (AFRICA), LTD., [1917] App. D. 147.—**S. AF.**

PART V. SECT. 2, SUB-SECT. 1.

247 i. *General powers—Limited by recital.*]—A power of attorney enabling an agent to grant a lease is not revoked by the return of the landlord to the United Kingdom, even though the document containing the power of attorney states that it is granted owing to the grantor being about to depart from the United Kingdom GRAHAM *v.* MANDERS (1918), 1 L. T. 5.—**IR.**

258 iii. —— —— .]—There is no power in an agent, acting under gen power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re* OSMAN (1919), 40 N. L. R. 17.—**S. AF.**

277 iv. —— —— ——.]—Power to borrow money & secure its repayment by mtge. is not to be inferred merely from general powers added to an enumeration of specific powers in a power of attorney, unless the of such a power is strictly to carry out the express the instrument or the acts authorised thereby.—ANDREWS *v.* SINCLAIR, [1923] 2 D. L. R. 903; 2 W. W. R. 166.—**CAN.**

283 ii. —— —— ——.]—Applt. co. gave to H., customs broker, a power of attorney "to transact all business which" applt. co. "may have with the Collector of the Port of Montreal or relating to the Department of the Customs of the said Port . . . ratifying & confirming all that . . . said attorney & agent shall do. . . ." Cheques to the order of the collector of Customs were given to H. on his requisition for the payment of duties on goods imported by applt. co., these cheques being made by the latter for fixed amounts corresponding to the invoices. Afterwards, through fraudulent devices, H., having succeeded in passing entries for much smaller sums than the quantity of goods required, induced the Customs House cashier to take the cheques thus issued by applt. co. for a higher amount than the one apparently due, & either to apply the surplus in payment of duties owing by third parties or to reimburse him in cash :—*Held :* (1) it was within the scope of the power of attorney given to H. by applt. co. that he should receive, in cash from the custom officials, balances of cheques delivered by him to them, after deducting the duties payable in respect of entries made by H. on behalf of applt. co.; (2) it was not within the ... of the power of attorney that he should direct the application of

297. *Add. Annotation :—Generally,* **Mentd.** North *v.* Loomes, [1919] 1 Ch. 378.

307. *Add. Annotation :*—**Mentd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

308a. Salesman—Authority to cancel sale.]—A salesman employed at a salary of £3 a week & 1¼ per cent. on sales effected by him is not authorised to cancel sales made on behalf of his principal.—LECKENBY *v.* WOLMAN, [1921] W. N. 100.

313. *Add. Annotation :*—**Mentd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

324. *Add. Annotations :*—**Mentd.** Weigall *v.* Runciman (1916), 85 L. J. K. B. 1187; Manbre Saccharine Co. *v.* Corn Products Co., [1919] 1 K. B. 198; Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186; Johnson *v.* Taylor, [1920] A. C. 144; Wilson, Holgate *v.* Belgian Grain & Produce Co., [1920] 2 K. B. 1; Diamond Alkali Export Corpn. *v.* Bourgeois, [1921] 3 K. B. 443; Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226; Finn *v.* Shelton Iron, Steel & Coal Co. (1924), 131 L. T. 213; Hilton *v.* Westminster Bank (1926), 135 L. T. 358.

338a. —— Authority to sign for business purposes.]—Resps. had two accounts with applt. bank at Sydney in connection with a business which they there carried on. They informed the bank in writing that the two managers of their business had authority together to sign & indorse cheques, to draw & indorse promissory notes & bills of exchange, & to transact on their behalf all business connected with the accounts. Banks in Australia frequently issue to a customer, in exchange for a cheque in favour of the bank, a cheque, described as a "bank cheque," drawn by the bank on itself in favour of a person designated by him, or to bearer. In exchange for cheques drawn in favour of applt. bank by the managers, the bank issued to one of the managers bank cheques payable to a name designated by him; these cheques he fraudulently appropriated :—*Held :* applt. bank was not entitled to debit the bank cheques against resps. The manager had not implied authority to receive bank cheques, & the circumstances in which on certain previous occasions the manager had been allowed to give instructions as to the application of the amount of cheques drawn, made the evidence fall far short of the strong case needed to show an ostensible authority prevailing over written instructions.—AUSTRALIAN BANK OF COMMERCE *v.* PERRL, [1926] A. C. 737; 95 L. J. P. C. 185; 135 L. T. P. C.

341. *Add. Annotation :* **Mentd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

369. *Add. Annotation :*—**Mentd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

370. *Add. Annotations :—As to* (1) **Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

371. *Add. Annotation :—As to* (1) **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

373. *Add. Annotation :—As to* (1) **Consd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

balances of applt. co.'s cheques in payment of duties owing by H.'s other customers.—CANADIAN PACIFIC RY. CO. *v.* R. (1917), 55 S. C. R. 374; 37 D. L. R. 719.—**CAN.**

287 i. *See, also,* No. 287 v., *post.*

287 iv. ——— *Power to discharge.*]—A power of attorney appointed the grantor's wife his agent for the purpose of all dealings with his property, real or personal, in Canada. In the specific clause granting the power to execute instruments in connection with his real property, a discharge of mtge. was not named as one of the instruments :—*Held :* the very general words used in the power of attorney covered the right of the agent to execute a discharge of mtge.—*Re* LAND TITLES ACT, *Re* REGISTRATION OF A POWER OF ATTORNEY, [1918] 2 W. W. R. 947.—**CAN.**

287 v. ——— *Power to give—To secure unpaid purchase-money.*]—A transaction whereby an agent purchased land for cash on behalf of his principal & subsequently gave a mtge. on the land & a conveyance of other lands in satisfaction of the amount unpaid :—*Held :* authorised by the agent's power of attorney. RE *v.* PHILIP, [1918] 3 W. W. R. 457.—**CAN.**

sc. ——— *Property—Power to transfer to himself.*]—A husband had certain property put in his wife's name. He held a general power of attorney from her. Subsequently the husband, as his wife's attorney, had the property transferred into his own name :—*Held :* the wife was entitled to have the transfer to her husband set aside.—ELFORD *v.* ELFORD (1922), 69 D. L. R. 64 S. C. R. 125; [1922] 3 W. W. R. 339; 61 D. L. R. 40 14 Sask. L. R. 363.—**CAN.**

295 vii. ——— ——— *Power to contract.*]—Resp. co. having sold land to applt. gave to its agent in the Transvaal a general power of attorney conferring upon him "full power to act on our behalf in all matters & things that do or may affect or concern us in S. Africa." The power then proceeded in the following words "& in particular but without prejudice to the foregoing generality" to give particular instances of acts that the agent was empowered to perform :—*Held :* under the power the agent was authorised to sign the written contract of sale.—MEASROCK *v.* LIQUIDATOR, ETC., [1922] App. D. 237.—**S. AF.**

sd. ——— *Trading licence—Power to apply for.*]—A., a storekeeper, by general power of attorney appointed H. to manage & transact his business in Natal. At the date of appointment A. was trading under a licence *ex* good, but which later was void. H. applied for a new licence, but it was objected that he had no authority to make the application :—*Held :* the power of attorney was sufficient authority to H. for the purpose.—HAFFIZE *v* JACOBSON (1919), 40 N. L. R. 322.—**S. AF.**

sl. *Power granted by corporation to officials for time being—Registrar entitled to require proof that persons executing power hold office.*]—*Re* LAND TITLES ACT, ROYAL TRUST CO.'s CASE, [1921] 3 W. W. R. 246.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

sg. *Agent obtaining transfer of property to principal—Authority to transfer property to third party.*]—Applt. sold to D. land, a portion of which he had not obtained transfer. Applt. instructed resp., an attorney, to put the matter through; resp. thereupon obtained transfer of the piece of land in question into applt.'s name, & then gave transfer of the whole to D. :—*Held :* resp.'s authority was wide enough to cover the costs incurred by him in obtaining transfer of the piece of land into applt.'s name.—STANTON *v.* ALLPORT, [1923] 1 D. L. R. 155.—**S. AF.**

PART V. SECT. 3. SUB-SECT. 2.

sk. *Grain market usage—Right of broker to close out r.*]—RUSSELL *v.* CANADA WEST GRAIN CO., [1925] 3 W. W. R. 508.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.—A.

340 iii. ——— *Authority to draw in principal's name—Agent g cheques to repay personal*]—If a co.'s branch manager, whose powers include receiving money, depositing it in a bank in the co.'s name, & drawing cheques against such funds in the co.'s name for the purposes of its business but not for own personal business, misapp its funds by drawing cheques in the co.'s name to repay his own personal loans, the co. can recover the sums thus paid from those to whom they were paid, although the latter received them honestly & believing, as told them by the person paying them, that he had money coming to him from the co. for commission & that he was ed to draw cheques for these

ETC., CO. *v.* ABRAMS & KOVSKY, 2 W. W. R. 1006.—**CAN.**

379. *Add. Annotation :*—**Consd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

382. *Add. Annotation :*—**Refd.** Underwood *v.* Liverpool Bank, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

386. *Add. Annotation :*—*Generally*, **Mentd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

387. *Add. Annotation :* - **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclay's Bank, [1924] 1 K. B. 775.

390. *Add. Annotation :*—**Consd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

407. *Add. Annotation :*—*Generally*, **Mentd.** Isaacs *v.* Cook (1925), 134 L. T. 286.

426. *Add. Annotations :* -**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Apld.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

427. *Add. Annotation :* -**Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590.

432. *Add. Annotation :*- **Mentd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262; Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

433. *Add. Annotation :* -**Consd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

434. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 559

436. *Add. Annotation :*—**Refd.** *Re* Tenancy, Bebington *v.* Wildman, Ch. 559.

442. *Add. Annotation :*—**Refd.** *Re* Knight Hubbard's Underlease, Hubbard *v.* [1923] 1 Ch. 130.

464. *Add. Annotations :*—*Generally*, **Mentd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

465. *Add. Annotation :*—*As to* (1) **Refd.** Savill *v.* Harben (1919), 89 L. J. K. B. 47.

468. *Add. Annotation :*—**Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

469. *Add. Annotations :*—*As to* (1) **Consd.** Folkes *v.* King, [1923] 1 K. B. 282. **Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

475. *Add. Annotation :*—**Mentd.** The Parchim, [1918] A. C. 157.

477. *Add. Annotations :*—**Consd.** Folkes *v.* King, [1923] 1 K. B. 282; Lowther *v.* Harris (1926), 43 T. L. R. 21.

482. *Add. Annotation :*—*Generally*, **Mentd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

483a. — — **Agent intrusted with motor car—To sell to specified person.**]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *post*.

PART V. SECT. 3, SUB-SECT. 5.

379 ii. - - - - - —.]- Where a principal entrusts an agent with indicia of title & a signed transfer, the transferee's name being left blank, for the purpose of raising a certain sum on such securities, & the agent borrows a larger sum & fraudulently appropriates the difference, the lender being in ignorance of the amount specified by the principal, the principal cannot redeem the securities without paying the lender the amount lent. The fact that the transfer states a certain sum as consideration does not necessarily impose upon the lender the duty of as to the limitations of the agent's authority. MAHAN *v.* MANNESS, [1918] 2 W. W. R. 191; 28 Man. L. R. 470; 40 D. L. R. 136. **CAN.**

PART V. SECT. 3, SUB-SECT. 6.- A.

398 ii. - - - *Authority to sign contract Contract providing for p*

& gave to an agent a document in the following terms: "We hereby agree to sell the property for £6,700 nett, provided a sale takes place within fourteen days from date hereof. The above price to be clear of all commission charges." The agent, within the fourteen days, signed a contract of sale by which the property was sold to pltf. for £6,700, payable £1,000 deposit (£50 preliminary deposit, to be increased to £1,000 within one month), £2,350 within three months, & £3,450 within six months, possession to be given after the second payment £2,350 at the end of the three months. There was no provision for interest on the balance: *Held:* the document by defts. was not an authority the agent to sign a contract con- the above terms as to payment. BOYD *v.* O'CONNOR, [1923] V. L. R. 603. - **AUS.**

i. *authority.*] - Pltf. with defts. to purchase & es at an agreed price bushel. 'he farmers from whom pot. were to be purchased required & defts.

ed to make advances to put pltf. in funds for this purpose. Defts. were not prompt in providing funds, & pltf. complained of the delay which hampered him in buying, &, in order to induce him to carry out the contract, defts.' agent offered an advance of 25 cents per bushel on the contract price for four cart loads of potatoes:— *Held:* the agent on the spot, looking after defts.' interests, had a general authority sufficiently broad to cover the making of the contract for the advanced price.- LEGACY *v.* DAVISON (1919), 52 N. S. R. 543.- **CAN.**

r. This case was reversed (1916), 22 C. L. R. 307. Delete the words "no actual or apparent" in the sentence, "*Held:* O. had no actual or apparent authority to vary the written contract by substituti later date for delivery."

sl. *Agent agreeing to pensation to purchaser if transaction not completed Authority to sell.*]- A claim by a proposed purchaser for damages on the ground of an agreement by the vendor's agent for compensation to the purchaser should the contract not be made by the vendor, disallowed in the absence of any authority from the vendor to make such an agreement. - THOMPSON *v.* LYNNE, [1921] 1 W. W. R. 238; 56 D. L. R. 729.— **CAN.**

sm. *ing reduction in price.*] principal not found.- MASON & DEAN, LTD. *v.* UPOVIN, [1 D. L. R. 353, 57 N. S. R. **CAN.**

PART V. SECT. 3, SUB-SECT. 8.- A.

423 iv. - — *Express authority to let for term.*]- Pltf. was the owner of premises let to a weekly tenant. When the tenant left she recommended deft. to pltf. as a tenant. Pltf. never saw deft., but pltf.'s husband arranged form of lease with him, & there collected the rent, which was paid monthly, on behalf of pltf. & with her authority. In an action of ejectment deft. alleged that pltf.'s husband had given him a lease for four years from Dec. 1913, & that he was a tenant from year to year. Pltf. denied any knowledge of a lease for a term, or that she had given authority to her husband to make such a lease:—*Held:* the fact that pltf.'s husband had collected her rent was no evidence that he had authority to make a lease for four years on her behalf.—VOGE *v.* KERR (1919), 19 N. S. W. L. R. 34; 36 N. S. W. W. N. 19.— **AUS.**

427 ii. - — *Authority to find purchaser or tenant.*]—Deft. wrote to a land agent as follows:—"Re sale of hotel. I will take £2,500 for the freehold, & stock & furniture at valuation, or will lease for a term of five years, rent £5 per week. £1,000 walk in, walk out." The agent submitted the property to pltf., who elected to take a lease. The agent drew up an agreement to lease the property upon the terms mentioned by deft., & signed it on deft.'s behalf:—*Held:* deft.'s letter did not authorise the agent to bind him by a concluded contract, but merely amounted to an authority to find a purchaser.—QUICK *v.* WINTER, [1920] N. Z. L. R. 98.—**N.Z.**

sn. *Law agent—Authority to collect rents & manage property.*]—A law agent, even though he may be employed to collect the rents & attend to the repairs of a property, has no general authority to grant leases on behalf of his employer. The existence of such an authority must be proved by the person who requires to found upon it.—DANISH *v.* GILLESPIE, [1922] S. C. 656. —**SCOT.**

PART V. SECT. 3, SUB-SECT. 9.

so. *Bank manager consenting to addition of bank as plaintiff—General authority as such.*]—A local manager of a bank has authority to give consent in writing for the adding of pltf. If there be any reasonable doubt whether the signature to the consent is in reality his signature, the order should be that the bank be added as a party pltf. on filing the necessary consent.—KUSCH *v.* PEAT (1922), 63 D. L. R. 408; 15 Sask. L. R. at p. 326; [1922] 2 W. W. R. 174; *revsg.* 15 Sask. L. R. 324.—**CAN.**

484. *Add. Annotation :—As to* (1) **Refd.** Lowther v. Harris (1926), 43 T. L. R. 24.

485. *Add. Annotation :—As to* (2) **Consd.** Lowther v. Harris (1926), 43 T. L. R. 24.

485a. —— —— —— **Improper sale.**]—Pltf. was the owner of the A. tapestry & the L. tapestry, & he gave to P., a dealer in antiques, a limited authority to obtain & submit offers from possible purchasers. P. falsely represented to pltf. that he could obtain £525 for the A. tapestry, & pltf. allowed him to take it away for delivery to a purchaser, who in fact did not exist. P. then sold the A. tapestry to deft. for £250. Subsequently P., who never had authority to sell the L. tapestry, stole it from pltf. & sold it to deft. In an action for conversion deft. contended that P. had been in possession of the tapestries as a mercantile agent within the Act of 1889, & that as he had bought them from P. in good faith he had acquired the property in them. He also contended that pltf. had held out P. as a person with authority to sell & was estopped from saying that P. had no such authority in fact :—*Held :* (1) although P.'s authority was limited, & although he was not acting for any principal other than pltf., yet these facts did not prevent him from being a mercantile agent & in the circumstances he was a mercantile agent & in possession of the A. tapestry with the consent of pltf., & as to that tapestry the defence under the Act of 1889 was established ; (2) as to the L. tapestry, as P. was never in possession of it with pltf.'s consent, the defence under the Act failed, &, as pltf. had never represented to deft. that P. had authority to sell it, there was no estoppel, & pltf. was entitled to recover the value of the L. tapestry alone.—Lowther *v.* Harris (1926), 43 T. L. R. 21.

487. *Add. Annotations :—As to* (1) **Distd.** Kempler v. Bravingtons (1925), 133 L. T. 680. **Refd.** Lowther v. Harris (1926), 43 T. L. R. 21. *As to* (2) **Distd.** Kempler v. Bravingtons (1925), 133 L. T. 680.

488. *Add. Annotation :*—**Refd.** Lowther v. Harris (1926), 43 T. L. R. 24.

492. *Add. Annotation :—As to* (1) **Distd.** Laurie & Morewood *v.* Dudin, [1925] 2 K. B. 383.

495. *Add. Annotations :—As to* (1) **Consd.** Folkes v. King, [1923] 1 K. B. 282 ; Lake v. Simmons, [1926] 2 K. B. 51. **Refd.** Heap v. Motorists' Advisory Agency, [1923] 1 K. B. 577 ; Lowther v. Harris (1926), 43 T. L. R. 21.

495a. —— **Agent obtaining possession by trick—Authority to sell—At specified price.**]—The owner of a motor car delivered it to a mercantile agent for sale. The owner stipulated & the agent agreed that the car should not be sold at less than a specified price without the owner's permission. The agent intended from the beginning to sell the car immediately for the best price he could get & to use the proceeds for his own purposes. On the day on which he got the car he sold it for less than the specified price to a purchaser who bought it in good faith & without notice of the agent's fraud. The agent misappropriated the proceeds. The car was subsequently purchased by deft. In an action of detinue by the owner of the car deft. :—*Held :* (1) deft. acquired a good title by virtue of 1889 Act, s. 2 ; (2) the mercantile agent had not rendered himself liable to be convicted of larceny by a trick, inasmuch as he was authorised by pltf. to pass the property in the car to a purchaser ; (3) as pltf. in fact consented to the mercantile agent having possession of the car, it was immaterial whether the latter committed larceny by a trick.—Folkes *v.* King, [1923] 1 K. B. 282 ; 92 L. J. K. B. 125 ; 128 L. T. 405 ; 39 T. L. R. 77 ; 67 Sol. Jo. 227 ; 28 Com. Cas. 110 ; 86 J. P. Jo. 552, C. A.

Annotations :—As to (2) **Distd.** Heap v. Motorists' Advisory Agency, [1923] 1 K. B. 577. **Consd.** Lake v. Simmons, [1926] 2 K. B. 51 ; Lowther v. Harris, [1927] 1 K. B. 393.

495b. —— —— —— **To specified person—Sale to third party.**]—Pltf., desiring to sell his motor car for £210, & being informed by N. that he had a friend H., who would probably buy it for that price, allowed N. to have possession of the car for the sole purpose of showing it & endeavouring to sell it to H. There was no such person as H., & N. represented that there was with the intention of obtaining the car for his own benefit. N. afterwards through an intermediary sold the car to defts. for £110. Before N. got possession of the car he had been convicted of theft & other offences, but that was not known to any of the parties. While N. was in possession of the car he obtained an appointment as car salesman to a firm of motor engineers. In an action by pltf. against defts. for the return of the car or its value & damages for its detention : *Held :* (1) N. had obtained the car from pltf. by larceny by a trick, pltf. never having given any real consent to his having or passing the property therein, & pltf. should succeed in the action unless defts. had some valid defence thereto ; (2) defts. could not rely upon the defence that under 1889 Act, s. 2 (1), the sale to them was as valid as if the seller had been expressly authorised by pltf. to make the same, inasmuch as N. was not a "mercantile agent," &, if he was, the sale by him was not a sale in the ordinary course of his business as a mercantile agent, within that sub-section ; &, further, because defts. had failed to satisfy the proviso to that sub-section by showing that they had not at the time of the disposition notice that N. had not authority to sell the car ; & defts. had no defence to the action.

(3) Under 1889 Act, s. 2 (1), proviso, the *onus* is on the person taking under the disposition of the goods made by the mercantile agent of proving that he acted in good faith & without notice of the agent's want of authority, & is not upon the person whose goods have been disposed of by the agent of proving the contrary. Heap v. Motorists' Advisory Agency, Ltd., [1923] 1 K. B. 577 ; 92 L. J. K. B. 553 ; 129 L. T. 146 ; 39 T. L. R. 150 ; 67 Sol. Jo. 300.

Annotation :—As to (1) **Consd.** Lake v. Simmons (1926), 95 L. J. K. B. 586.

498. *Add. Annotation :—As to* (1) **Refd.** Lake *v.* 2 K. B. 51.

500. *Add. Annotation* Folkes King, 11 K. B. 28

PART V. SECT. 3, SUB-SECT. 10. A. (a) vii.

sp. *Act of* 1889—"*When acting in* *ordinary course of b* ile "means when acting The expression "when acting in the within hours, at a ordinary course of business of a of , & in other

505a. —— **Agent intrusted with motor car to sell to specified person—Sale to third party.**]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *ante*.

507a. —— **Onus of proof.**]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *ante*.

517. *Add. Annotation :—Generally*, **Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

520. *Add. Annotation :—As to* (1) **Refd.** Folkes *v.* King, [1923] 1 K. B. 282.

529. *Add. Annotation :*—**Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

582. *Add. Annotation :*—**Refd.** Pearl Mill Co. *v.* Ivy Tannery Co., [1919] 1 K. B. 78.

586. *Add. Annotation :—As to* (1) **Refd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

590. *Add. Annotation :*—**Refd.** Coldingham Parish Council *v.* Smith, [1918] 2 K. B. 90.

591. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

605. *Add. Annotation :*—**Refd.** Miss Gray, Ltd. *v.* Cathcart (1922), 38 T. L. R. 562.

608a. **Tenant of public-house—Not being licensee—Holding out.**]—Deft. was the licensee of a public-house at which meals were served. In 1917, an agreement was entered into between deft. & the general manager of the owners & a third person, whereby the latter became the tenant of the licensed premises & deft. was released from all obligations under the tenancy. The licence, however, was not transferred, & deft.'s name remained painted up over the doorway. During the continuance of the new tenancy liquor as well as food was sold on the premises. Pltfs., during this period, supplied fish, fruit & vegetables to the tenant. The accounts were not fully met, & pltfs., on discovering that deft. was the licensee, which discovery was made after the goods had been supplied, sought to make him liable for the price on the ground that the tenant was either the agent of deft. by operation of law, or that deft. was estopped from denying such agency :—*Held :* where two people agreed that one should illegally & improperly occupy a position which could only be lawfully occupied by the other, that did not necessarily make the person occupying the position the agent for all purposes of the person who ought to be occupying it ; the tenant was not in fact deft.'s agent ; & as between himself & pltfs., deft. was not estopped from setting up the true state of affairs, because, whatever misrepresentations were made, they did not reach pltfs. nor cause them to act to their detriment.—MACFISHERIES, LTD. *v.* HARRISON (1924), 93 L. J. K. B. 811 ; 132 L. T. 22 ; 88 J. P. 154 ; 40 T. L. R. 709 ; 69 Sol. Jo. 89.

627. *Add. Annotation :*—**Refd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

646. *Add. Citation :—sub nom. Re* WOLVERHAMPTON, CHESTER & BIRKENHEAD JUNCTION RY. CO., *Ex p.* COTTLE, 14 Jur. 703.

Add. Annotation :—**Apld.** *Re* Direct Exeter, Plymouth & Devenport Ry. Co., *Ex p.* Roberts (1850), 2 H. & Tw. 392.

656. After this case insert " *See, also*, COMPANIES, Vol. IX., p. 53, Nos. 116 *et seq.*

664. After this case insert " *See, also*, COMPANIES, Vol. IX., pp. 44, 53, Nos. 61–63, 110."

665. *Add. Annotation :*—**Mentd.** Nichol *v.* Fearby, Nichol *v.* Robinson, [1923] 1 K. B. 480.

704a. **Mess committee—Goods ordered by secretary.**]—Pltf. supplied goods to the officers' mess of a brigade of which deft. was at the time commanding officer, the orders for the goods being given by the secretary of the mess committee. Pltf. sued deft. for the price, alleging that under the King's Regulations deft. was liable or that he was liable as principal for the acts of the mess secretary :—*Held :* the Regulations did not create any liability between the commanding officer & tradesmen, & as deft. neither gave nor authorised the orders, & pltf. did not give deft. credit, the action failed.—LASCELLES *v.* RATHBUN (1919), 35 T. L. R. 347 ; 63 Sol. Jo. 410, C. A.

In the ordinary way in which a
t would act, so that
to lead the pledg
that anything wrong is
done, or to give him notice that the
tion is one which the mercantile
had no authority to make.—ACME STEEL GOODS CO. OF CANADA, LTD. *v.* WALSH CONSTRUCTION CO., LTD., [1922] 1 W. W. R. 689 ; 63 D. L. R. 529 ; 30 B. C. R. 539.—**CAN.**

PART V. SECT. 3, SUB-SECT. 10.—A. (a) viii.

st. *Act of* 1889—*Necessity for proof of mala fides of purchaser.*]—Where an owner of goods, who has placed them with a mercantile agent, sues an alleged
hereof from the agent for
on [the above Act] the actual payment of money by deft to the agent will not destroy the fact of *mala fides*, but the fact that the transaction is found not to have been an ordinary sale, i.e. a sale to one desirous of either using the goods or disposing of them to advantage, can of itself have a bearing only on the question of good faith, & proof of the dishonesty of the agent is not sufficient ; it must be shown that deft. acted in bad faith, & the evidence should be such as to prove to the hilt the *mala fides* of the alleged sale.—ACME STEEL GOODS CO. OF CANADA, LTD. *v.* WALSH CONSTRUCTION CO., LTD., [1922] 1 W. W. R. 689 ; 63 D. L. R. 529 ; 30 B. C. R. **CAN.**

PART SECT. 3, SUB-SECT. 11.

573 i. *—Authority to buy at —Secret limitations.*]—If a person desiring to buy grain arms his agent with contract forms for the purpose & sends him out to have these forms executed by vendors & with authority to sign them on his behalf subject to the verbal condition that the agent must stipulate that the contracts are not to come into effect until his principal has approved of the
this is a holding out that the
has authority to make the con-
& the principal is bound thereby though no such stipulation is made therein & no samples approved by the principal, if the vendors have no notice of such limitation of the agent's authority.—REED & KEAST *v.* MCKENZIE CO., LTD., [1921] 3 W. W. R. 72.—**CAN.**

sa. *Manager of branch office—Authority as such.*]—When a co. so conducts its business that a person who sells & delivers goods to a branch office thereof on an order received from such office
led to suppose that the
has authority to give the order, the co will not be permitted to escape liability for the purchase price on the ground that such branch office had no authority to buy the goods.—FARM PRODUCTS, LTD. *v.* MACLEOD FLOURING MILLS, LTD., [1918] 3 W. W. R. 1035 ; 14 Alta. L. R. 128 ; 43 D. L. R. 770.—**CAN.**

PART V. SECT. 3, SUB-SECT. 12.—A.

sb. *Member of syndicate acting for syndicate.*]—Pltf. sought to recover from defts., members of a syndicate formed for the purpose of exploring & testing certain mining properties, the price of goods supplied upon the order of one of the defts., C., & upon his credit. At the time the goods were supplied, pltf. did not know that C. was a member of a syndicate or was acting for others :—*Held :* defts. other than C. were not liable to pltf.—MCLAUGHLIN *v.* GENTLES (1920), 46 O. L. R. 477 ; 51 D. L. R. 353 ; 17 O. W. N. 245.—**CAN.**

PART V. SECT. 3, SUB-SECT. 13.—A.

sa. *Agent—Holding out.*]—If a debtor gives money to another to pay to his, the debtor's, creditor, but the third party fails to pay the same over, the debtor is liable for the amount, unless the third party was the creditor's
The *onus* is on the debtor to

711. *Add. Annotation :*—**Dbtd.** Butwick *v.* Grant, [1924] 2 K. B. 483.

712. *Add. Annotation :*—**Expld.** Butwick *v.* Grant, [1924] 2 K. B. 483.

714. *Add. Annotation :*—**Consd.** Butwick *v.* Grant, [1924] 2 K. B. 483.

714a. —— ——.]—Authority to an agent to sell goods does not of necessity imply authority to receive payment of the price.—BUTWICK *v.* GRANT, [1924] 2 K. B. 483 ; 93 L. J. K. B. 972 ; 131 L. T. 476, D. C.

744. *Add. Annotations :*—**Apld.** Bradford *v.* Price (1923), 92 L. J. K. B. 871. **Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

747. *Add. Annotation :—Generally*, **Mentd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

747a. —— **Authority to receive cash for goods—Notice to purchaser to draw cheques to seller's order].**—Pltfs., who were coal factors, engaged W. to manage a branch business for them. W. was authorised to receive payment in cash for coal supplied by pltfs. to their customers. Pltfs. had notified their customers, including defts., that all cheques must be made payable to pltfs.' order, & not to that of W. Defts. nevertheless paid for coal supplied to them by pltfs. by cheques made payable to W. or order. All these cheques were duly honoured on presentation. W. paid seven of defts.' cheques into his own private account & embezzled the proceeds : —*Held :* as W. was authorised by pltfs. to receive payment in cash for coal supplied, & defts. had paid W. by cheques payable to his order, & the cheques were duly honoured, defts. were discharged, notwithstanding that pltfs. had notified them that all cheques must be made payable to pltfs.' order.—BRADFORD & SONS *v.* PRICE BROTHERS (1923), 92 L. J. K. B. 871 ; 129 L. T. 408 ; 39 T. L. R. 272.

750. *Add. Annotation :*—**Consd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

751. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

752. *Add. Annotations :—As to* (3) **Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640 ; Bradford *v.* Price (1923), 92 L. J. K. B. 871.

754. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

768. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

769. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

773. *Add. Annotation :—As to* (1) **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

778. *Add. Annotation : —As to* (2) **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

781. *Add. Annotations :* —**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871 ; Butwick *v.* Grant, [1924] 2 K. B. 483.

786. *Add. Annotations :*— —**Refd.** Fottes *v.* Robertson (1921), 37 T. L. R. 581. **Mentd.** Spencer *v.* Hemmerde (1922), 128 L. T. 33.

798. *Add. Annotations :* **Consd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240 ; Maskell *v.* Hill, [1921] 3 K. B. 157. **Mentd.** Cohen *v.* Hall, [1922] 2 K. B. 37.

809. *Annotations :* For "For full anns., *see* LANDLORD & TENANT," read "For full anns., *see* SALE OF LAND."

Add. Annotation :— As to (3) **Refd.** Chillingworth *v.* Esche (1923), 92 L. J. Ch. 461.

prove either that there was an express agency, or to show, by the acts of the creditor, that these were sufficient to establish agency by holding out or estoppel.—CARR *v.* FRY & MCCUNE, [1924] 4 D. L. R. 735.—**CAN.**

711 v. —— —— *Right to receive deposit.*]—An agent for sale has no implied authority as such to receive a deposit.—PEARSON *v.* WILSON (1917), Q. W. N. 49 ; 11 Q. J. P. 105.—**AUS.**

711 vi. —— —— ——.]—Pltf. made an offer to D., as agent for L., to purchase land of L. for $5,000, & with the offer paid $200 to D. as a deposit. In an action for return of the $200, the offer not having been accepted, the trial judge found that L. when approached by pltf. sent him to D. & told him to make an offer through D. ; that D. procured from pltf. a written offer to purchase at $5,000, paying part only in cash, & that offer was refused by L. ; that D. obtained from pltf. a second offer to pay all cash, & this L. also refused :—*Held :* D. had authority to receive an offer, &, as the making of a deposit was a part of that offer, D. was not going beyond his authority in receiving it.—SILVERMAN *v.* LEGREE (1919), 45 O. L. R. 107 ; 47 D. L. R. 713 ; 15 O. W. N. 278.—**CAN.**

sd. *Person obtaining possession of bill of lading—Intervention between shipper & consignee.*]—Mere possession of a bill of lading in the hands of a person who has intervened between the original shipper & the consignee & is in no way identified with the transaction except by possession of the document, does not give him any authority to give a valid discharge of the money payable by the consignee.—STEWART *v.* RICHARDSON SONS & CO., LTD., [1920] 3 W. W. R. 134 ; 53 D. L. R. 625 ; 30 Man. L. R. 481.—**CAN.**

PART V. SECT. 3, SUB-SECT. 13.- B.

746 i. *Agent.*] An agent authorised to receive money for his principal may not receive anything but money ; but, if he receives a cheque on a bank, & the amount of the cheque is paid to the agent before his authority is revoked, that is a good payment to his principal.—DELORY *v.* GUYETT (1920), 47 O. L. R. 137 ; 52 D. L. R. 506 ; 17 O. W. N. 474.—**CAN.**

sf. —— *Authority to collect debts—Cashing cheques received.*]—A clerk employed in the business of the Canadian Govt. elevators, whose duties were to collect amounts from grain dealers for freight etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all money collected to the credit of the Receiver-General in a designated bank & at certain intervals to remit by draft to the head office of the business, & which charges were almost always paid to him by accepted cheque, although they might have been received in cash if so tendered :—*Held :* to have no authority to cash any cheques paid to him or any ostensible authority justifying any bank giving him the cash for any such cheque.—R. *v.* ROYAL BANK OF CANADA, [1920] 1 W. W. R. 198 ; 50 D. L. R. 293 ; 30 Man. L. R. 104.—**CAN.**

PART V. SECT. 3, SUB-SECT. 15.

804 i. *Agent—Implied authority from—Husband authorised to for wife.*]—The fact that a husband was authorised to act, & his of stock through brokers does not in itself justify the brokers in assuming that he is her agent to direct a sale of it ; & even assuming that the rules of the stock exchange to which the order to purchase placed confer on the husband authority to direct such sale, the brokers' responsibility to the wife for the proceeds of the sale is not discharged by payment to the husband unless they show that he had authority, either or implied, to receive the money.—ATKMAN *v.* BORDEN BROTHERS, [1923] 4 D. R. W. W. R. 785 ; D. L. R. 1165 ; 31 B C R. 478.- **CAN.**

808 v. —— —— *Break in* Instructions by an owner of wheat to his agent to "sell" without more means "sell as soon as possible," unless there is something in the circumst or the custom of a par'icular known to both parties to give the a different meaning. Where instructions to sell, without stipulating any price, were given after the close of the market on May 3 :—*Held :* the agent was justified in selling without further instructions at the opening of the market on May 4, though the market had broken by reason of the Grain Exchange having withdrawn option trading & the possibility of the Govt. fix'ng the price.—GRAHAM *v.* QUAKER OATS CO., [1919] 3 W. W. R. 888.—**CAN.**

809 ii a. —— —— ——.]—Deft. wired to S., a land agent £13,250 net, £400 down, stock furniture at valuation." S. "Your wire says £400 down ; you mean £4,000, wire us enough authority to sell if we can get your net price." Deft. then wired, "Four thousand down. Sell if you can get my net price." S. replied, "Have sold in accordance with your wire, freehold

828. *Add. Annotations :—As to* (1) **Distd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167. **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871. *Generally*, **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

829. *Add. Annotation :*—**Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

833. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Apld.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

834. *Add. Annotation :—As to* (1) **Consd.** Keen *v.* Mear, [1920] 2 Ch. 574.

834a. —— ——.]—A general authority to an agent to find a purchaser of a house does not authorise the agent to sign a contract binding on the vendor. There must, to justify such a signing, be a special & express authority to sign.—LEWCOCK *v.* BROMLEY (1920), 127 L. T. 116 ; 37 T. L. R. 48 ; 65 Sol. Jo. 75.

834b. —— ——.]—The mere employment of an estate agent by an owner to dispose of a house confers no authority to make a contract. The agent is solely employed to find some one to negotiate with the owner. But if the agent is definitely instructed to sell at a certain price, those instructions involve authority to make a binding contract & to sign an agreement.

But the authority is limited to signing an open contract & does not authorise the agent to sign a contract with special conditions, *e.g.* as to title with which it is no part of an estate agent's duty to deal.—KEEN *v.* MEAR, [1920] 2 Ch. 571 ; 89 L. J. Ch. 513 ; 124 L. T. 19.

836. *Add. Annotations :*—**Consd.** Keen [1920] 2 Ch. 574. **Distd.** Lewcock *v.* (1920), 127 L. T. 116.

836a. —— ——.]—KEEN *v.* MEAR, No. 834b,

836b. —— —— **Authority alleged to be limited to state price.**]—Action for specific performance of a contract alleged to have been entered into by letters between pltfs. & H. & R., estate agents, whom pltfs. alleged were agents for the first deft. for the sale to pltfs. of freehold premises. The defence was that the agents had a limited authority to state a price only. The premises had been offered for sale by auction by order of the mtgees. under particulars & conditions of sale referred to in the correspondence on Jan. 18. H. & R. inclosed plan & auction particulars to pltfs. stating in their letter that their client would be willing to sell the freehold at £550. On Jan. 27, pltfs. offered £400. On the 28th H. & R. submitted that offer to the first deft., & asked for her instructions. On Feb. 8, the first deft.'s husband communicated with H. & R. over the telephone, & on Feb. 10, they wrote to pltfs. stating that their client would not accept £400, & that "we are now authorised to close with you if you will increase your offer to £450." Pltfs., on Feb. 14, wrote to H. & R. referring to the letter of Feb. 10, & stating "we are prepared to accept your offer of this property agreeing to the price of £450. Kindly forward the contract in due course." On Feb. 17, H. & R. wrote informing the first deft. that, as instructed by her husband, they had offered the property to pltfs. for £450,

for £13,750, stock & furniture at valuation, showing you £13,250 net, £1,000 to be paid down, balance to be arranged on mtge. by you. Possession as soon as license granted, not later than Aug. 20, £500 deposit paid" : *Held* S. had no authority to sell on the terms on which he did sell. PRUNGE *v.* MCKAY, [1922] N. Z. L. R. 818. **N.Z.**

815 iii a. — — —.] — GEARHART *v.* QUAKER OATS CO. (1918), 42 D. L. R. 791. **CAN.**

815 iii b. — — — — —.] — A land agent, whom pltf. had informed of his willingness to sell a property for £900, obtained an offer of £825 & telegraphed it to pltf., but through a mistake in transmission the message as delivered to pltf mentioned 1925 as the amount of offer. Pltf. telegraphed his acceptance without naming an amount. The offer having been withdrawn, the agent agreed to sell the property to deft. for £825, & let him into possession. On the tender of the formal contract to pltf for execution a month later he learned about the mistake in the telegram for the first time & refused to complete : —*Held :* the specific authority originally given to the agent did not authorise the sale of pltf.'s property for less than £900, & no land agent as such is held out as having a general authority on behalf of his client to sell on any terms or at any price. SHORTAL *v.* BUCHANAN, [1920] N. Z. L. R. 103.—**N.Z.**

815 v. — — — — —.] Pltfs., an incorporated co., owning lots of land, appointed C. their general manager to supervise the sale of the lots. In the agreement between pltfs. & C. it was provided that he had no authority to make any representation as to pltfs.' properties other than those con- in their printed matter, & that

offers for the purchase of lots acc to pltfs.' price-list. Pltfs. employed G. to sell their lots. G., in Mar. 1914, telephoned to deft. from pltfs.' office & induced deft. to buy two of the lots, upon the express agreement that pltfs. would resell the lots not later than Aug. 1914, at a profit of $100 on each lot ; G. informed deft. that he was authorised by C. to make this arrangement. C. was present when G. was telephoning, & heard what G. said ; C. told G. that he should not have said that pltfs. would resell the lots ; but, according to the testimony of G., C. himself was not called as a witness, C. ratified the representation made in his name & ostensibly by his authority : *Held :* C., as general manager, had ostensible authority to make or ratify the collateral agreement, & any secret restriction of his authority would not affect deft., who relied upon his being the general manager. CANADIAN GENERAL SE- 'o., LTD. *v.* GLOBE L. J. , 360 ; 13 O. W. N O. W. N. 71 ; 43 D. L. R. 20.—**CAN.**

817 ii. — — — *Implied authority*]— A broker who had purchased corn on margin for a customer. *Held :* justified in selling on the customer failing to forward margin money when a slump occurred in the market-price, a general condition of the broker transacting such business being that he reserved the right to close transactions without further notice when margins were unsatisfactory, which condition the ct. inferred must have been known to the customer who had been for some time a room trader" & dealer on a larger ale in the broker's office.— . BICKELL, [1920] 1 W. W. R. 407 ; 50 D. L. R. 500 ; 17 O. W. N. 24 ; 59 C. R. **CAN.**

817 iii. — *Authority to find pur-* —On Jan. 20, 1920, deft. to his brokers a letter in these terms : "I authorise you to procure a buyer of the above premises for Rs. 45,000 & on your sending same, I shall pay you as remuneration at 1 per cent. on the purchase-money. The same will be paid at the registration of the conveyance, otherwise not." The offer contained in the letter was accepted by pltf. & thereupon the fact of such acceptance was communicated on the same day to deft. :—*Held :* the offer contained in the letter amounted only to an offer to be put into touch with intending buyers of the premises & it was in no sense an authority to the brokers to sell deft.'s property or an offer on the part of the vendor to sell the premises to whoever might be brought in touch with the vendor by the brokers.—PURNA CHANDRA DUTT *v.* INDRA CHANDRA ROY (1921), I. L. R. 49 Calc -**IND.**

821 i. *General authority—Sale in own* .]—*Held :* position of pltfs. is that of brokers, in selling in their own name they acted beyond the scope of their authority.—PATERSON *v.* MCCALLUM, [1921] N. Z. L. R. 869.—**N.Z.**

833 xiii a. — *Instructions to proper at specified sum.*]—In negotiations for the sale of property a notification by a principal to his agent that he will accept a purchaser at a specified sum will not authorise the agent to conclude a contract.—CARNEY *v.* FAIR (1920), 54 I. L. T. 81.—**IR.**

sk. *Solicitor — Authority to tenders—Tenders to be sent either to or principal.*] Exors. gave instruct. to solrs. to advertise for tenders for a property & they told the solrs. to insert in the advertisement a notice to the effect that tenders might be sent either to the solrs. or to either of the exors ; this latter the solrs. did not do. A tender was received by the solrs. &

& that pltfs. had agreed to buy. The second deft. was prepared to purchase the property from the mtgees. at a price more than £450 :—*Held :* the agents had authority to conclude the contract, & pltfs. were entitled to judgment for specific performance of it.—ALLEN & Co., LTD. *v.* WHITEMAN (1920), 89 L. J. Ch. 534 ; 123 L. T. 773 ; 64 Sol. Jo. 727.

837. *Add. Annotation :*—**Refd.** Banque Belge Pour L'Etranger *v.* Hambrouck (1920), 37 T. L. R. 76.

850. *Add. Annotation :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

860. *Add. Annotation :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

872. *Add. Citations :*—*affd.*, [1918] A. C. 626 ; 87 L. J. K. B. 1158 ; 119 L. T. 446 ; 34 T. L. R. 518 ; 62 Sol. Jo. 665, H. L.
Add. Annotations :—**Mentd.** Calmenson *v.* Merchants' Warehousing Co. (1920), 125 L. T. 129 ; Dey *v.* Mayo, [1920] 2 K. B. 346 ; Everett *v.* Griffiths, [1921] 1 A. C. 631. Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305.

883a. Salesman — Authority to cancel sale.]—LECKENBY *v.* WOLMAN, No. 308a, *ante*.

897. For "For full anns., *see* ESTOPPEL," read "For full anns., *see* DEEDS, Vol. XVII., p. 216, No. 285."

Part VI.—Delegation.

906. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

922. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

926. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

941. *Add. Annotation : As to* (1) **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

942. *Add. Annotation :*—**Refd.** Prager *v.* Stamp & Heacock, [1924] 1 K. B. 566.

944. *Add. Annotation :*—**Refd.** Prager *v.* Blat Stamp *v.* Heacock, [1924] 1 K. B. 566.

966. *Add. Annotation :*—**Consd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

975. *Add. Annotation :* —**Consd.** Belvedere Fish Guano Co. *v.* Rainham Chemical Works, Feldman & Partridge, Ind, Coope *v.* Same, [1920] 2 K. B. 487.

Part VII.—Ratification.

987. *Add. Annotation :*—**Consd.** *Re* Becket, Purnell *v.* Paine, [1918] 2 Ch. 72.

998. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

1002. *Add. Annotations :*—**Mentd.** McMillan *v.* Canadian Northern Ry., [1923] A. C. 120 ; Walpole *v.* Canadian Northern Ry., [1923] A. C. 113.

1005. *Add. Annotation :* **Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

forwarded by them to the exors & they wrote acknowledging the receipt thereof. Some days later the tenant of the property forwarded a tender to one of the exors., who did not communicate with his co-exor. or the solrs. about it. The solrs., having heard no more from the exors. entered into a contract to sell the property to the person who made the first tender :—*Held :* the solrs. had no authority to give notice to the person making the first offer that his tender was accepted.—*DEANS v.* ORR (1922), 63 D. L. R. 720.—

PART V. SECT. 3, SUB-SECT. 16.

a. Transpose lines 5 & 6 of this paragraph.

PART V. SECT. 3, SUB-SECT. 17.

81. *Agent forbidding purchaser to use machinery only partly paid for—Authority as such.*]—Where a letter, sent to a buyer of a farm machine under a conditional sale contract before he is in default, forbidding him, under a threat of serious consequences, to use the machine, is written by an agent of the seller, with authority to sell & collect the purchase-money & make settlements therefor, as an assertion of a right which is to continue until the buyer makes a settlement, it will be held to be written within the apparent scope of such agent's authority. —ROBERT BELL ENGINE & THRESHER CO. *v.* FARQUHARSON, [1918] 1 W. W. R. 924 ; 11 Sask. L. R. 81 ; 39 D. L. R. 625. —**CAN.**

PART VI. SECT. 1.

906 iii. *Mother*
rty.]—Where a pa
employs another relying upon peculiar aptitude for the work entrusted to him, it is not competent for that person to delegate the trust to another.

Where the authority which a mother had to manage her daughter's property involved a certain trust or discretion for the exercise of which she was selected :—*Held :* she could not delegate that trust & appoint her husband to perform the duties of her agency.—ROBINSON *v.* LONG, [1923] 3 D. L. R. 918.—**CAN.**

906 iv. — — — *Manager of property.*]—A lease is invalid if it is granted by a person as attorney for one who is a manager of the property leased, & who did not negotiate or consider the lease or know of it until after its execution.—BONSERJI *v.* SITANATH DAS, (1921), 49 L. R. Ind. App. 16 ; I. L. R. 49 Calc. 325.—**IND.**

PART VI. SECT. 2, SUB-SECT. 1.

943 iii. — — — — — — .] — If an agent for
of ain to whom the goods are
or delivered, consigns the same to a sub-agent for sale, & the bill of lading & such other documents & circumstances as there are support the inference of the agent's right to deal with the goods, then in the absence of anything showing a contrary intention the sub-agent has only to account in respect of the proceeds to the first agent & not to the original principal.

[1920] 3 W. W. R. 159 ; 53 D. L. R. 451 ; 30 Man. L. R. 520.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.

964 v. — — — — — — *Contract with sub-*
al approved by principal.] Where a
had engaged an agent to sell its shares, had intended him to employ sub-agents, & had approved of the contract made by the agent on its behalf with a sub-agent : *Held :* the co. was liable to the sub agent for commission due under his contract.—BERGMAN *v.* CANADIAN FARM IMP. CO., [1924] 1 D. L. R. 350.—**CAN.**

PART VII. SECT. 3.

1006 v a. — — — — .] A contract made on behalf of a person, but without his authority, by a person who does not profess to be acting for a principal cannot be ratified.—REMER *v.* ROSEN, [1918] 1 W. W. R. 425.—**CAN.**

1006 v b. — — — — .] A person does not become a principal by any act of so-called ratification, unless at the time of the contract the so-called agent was not acting for himself but was intending to bind an ascertainable principal; even if it is intended that some unnamed principal shall benefit, if the so-called agent purports to be acting for himself & not for another, the rule applies. McCALLUM
44 O. L. J. 497 46 R.
733 ; 1 W. N.

1006 pltf. F.
were c of defts bank F.
a pltf., largely indebted to the bank. K., a branch manager, drew up a promissory note for $2,500 which was signed by F. & made payable to the order of pltf. on demand. Pltf. was induced to advance the $2,500 before the undertaking by F., written on the note, "this note will be paid when demanded," but K. did not sign this statement as branch
r. The bank received the
by pltf.'s cheque payable to

1009. *Add. Annotations :*—**Refd.** Drughorn *v.* Rederiaktiebolaget Trans-Atlantic, [1919] A. C. 203; The Joannis Vatis (1921), 91 L. J. P. 182; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1022. *Add. Annotation :*—**Consd.** Reynolds *v.* Atherton (1921), 125 L. T. 690.

1026. *Add. Annotation :*—**Refd.** Reynolds *v.* Atherton (1921), 125 L. T. 690.

1027. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1028. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1029. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1033. *Add. Annotation :*—**Refd.** Bowyer, Philpott & Payne *v.* Mather, [1919] 1 K. B. 419.

1033a. —— **After issue of notice to abate—Before institution of proceedings.**] — By a bye-law of the city council of W., which was the sanitary authority of W., it was provided that whenever the council was in vacation the mayor & the chairmen of the respective committees of the council might give such instructions as were requisite with respect to any matter of an urgent nature, provided that all such acts were in due course reported to the council. The council of W. held no meeting between July 26, 1917, & Oct. 18, 1917—the summer vacation, & the public health committee of the council did not sit between July 17, 1917, & Oct. 9, 1917. On July 17, 1917, the public health committee passed a resolution appointing its chairman, & in his absence the acting vice-chairman, to deal with all urgent matters on behalf of the committee during the summer vacation. This resolution was reported to the council & approved by them on July 26, 1917. About the middle of Sept. 1917, the medical officer of health, being satisfied that a nuisance existed upon certain premises in the district of the council & city of W., caused a written notice of the fact of its existence to be served on the owner of the premises under Public Health London Act, 1891 (c. 76), s. 3. As the nuisance was not abated, the matter was reported by the medical officer to the chairman of the public health committee, & the latter, considering that the matter was urgent, & acting under the authority conferred upon him by the resolution of the public health committee, which had been confirmed by the council, as before stated, directed that a notice should be served upon the owner of the premises requiring him to abate the nuisance in accordance with the provisions of sect. 4 of the Act. This notice, which was issued in due form, was served upon the owner on Sept. 25, 1917. This action of the chairman was reported to the public health committee at their first meeting after the summer vacation, on Oct. 9, 1917, & approved by them, & the matter was later on, on Oct. 18, 1917, reported to & approved by the council. As the nuisance still continued, proceedings were taken against the owner by the sanitary inspector, & on Dec. 5, 1917, an order was made for its abatement by the magistrate who heard the complaint. The owner thereupon applied for & was granted a rule *nisi* for *certiorari* to quash the order of the magistrate on the ground that the same was made without jurisdiction, the notice of Sept. 25, 1917, not having been given by the authority or direction of the council or of the public health committee, or after consideration by them in pursuance of Public Health London Act, 1891 (c. 76), s. 4 (1) :—*Held :* as the act of the duly authorised agent of the council, namely, the chairman of the public health committee, appointed to act in urgent matters during the vacation under the bye-law & in pursuance of the resolution of the committee subsequently ratified by the council, was reported to & approved & ratified by the council prior to the institution of proceedings against the owner of the premises, the ratification related back to the time of the doing of the act in question, namely, the serving of the notice of Sept. 25, 1917, & the magistrate had jurisdiction to make the order of Dec. 5, 1917.—R. *v.* CHAPMAN, *Ex p.* ARLIDGE, [1918] 2 K. B. 298; 87 L. J. K. B. 1142; 119 L. T. 59; 82 J. P. 229; 16 L. G. R. 525, D. C.

Annotation :—**Refd.** Bowyer, Philpott & Payne *v.* Mather, [1919] 1 K. B. 419.

1040. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

order of F. & indorsed by him, which sum was then used to liquidate F.'s debt to the bank. Pltf. claimed that deft. bank had ratified the acts of K. & were liable :—*Held :* it was not the intention of K. as shown by the evidence to act as agent of defts. in the transactions.—BRASSETH *v.* ROYAL BANK OF CANADA (1922), 67 D. L. R. 740.—**CAN.**

PART VII. SECT. 5.

1037 vii. ——.]—In order that a person may be deemed to have ra an act done without his authority, it is necessary that at the time of the ratification he should have full knowledge of all the material circumstances in which the act was done, unless he intends to ratify the act & take the risk whatever the circumstances may have been.—WHEELER *v.* HISEY (1918), 42 O. L. R. 654; 14 O. W. N. 150; 43 D. L. R. 92.—**CAN.**

1037 viii. ——.]—The agent of defts. hired pltfs., but exceeded his authority in regard to the terms of hire :—*Held:* defts. were not estopp by services, from disputing pltfs.' for wages, defts. having repudiated the agent's authority as soon as the terms of the contract were brought to their attention.—ROY *v.* ST. JOHN LUMBER CO., FISHER *v.* ST. JOHN LUMBER CO. (1919), 46 N. B. R. 120.—**CAN.**

1037 ix. —— —.]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 1.

1044 vii. ——.] — In considering whether a person is bound by the acts of an ostensible agent which are alleged to have been ratified, the distinction is to be observed between a ratification to be implied from conduct an intention to ratify & an to deny ratification, the case, that where, without a intention to ratify, the so-called principal is estopped from denying that his conduct must be treated as a ratification.—MCKAY *v.* TUDHOPE ANDERSON CO., LTD., [1918] 3 W. W. R. 994; 44 D. L. R. 100; 14 Alta. L. R. 131.—**CAN.**

1044 viii. ——.]—Ratification by a principal of the acts of an alleged agent must be evidenced either by clear adoptive acts or by acquiescence equivalent thereto, & the act or acts of adoption or acquiescence must be accompanied by full knowledge of all the essential facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—**CAN.**

1044 ix. ——.]—If an agent executes on behalf of a former principal a contract for the sale of land, although his authority to execute such contracts has terminated, then if the purchaser seeks to hold the principal liable thereunder he must show that the principal placed himself by some act or of his own in a position which compels him to accept the contract &

1079. *Add. Annotation :*—*As to* (1) **Refd.** Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1080. *Add. Annotation :*—**Mentd.** *Re* Witham, Chadburn *v.* Winfield, [1922] 2 Ch. 413.

1102. *Add. Annotations :*—**Consd.** *Re* Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249. **Mentd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

1109. *Add. Annotation :*—*As to* (2) **Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1128. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1129. *Add. Annotation :*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1137. *Add. Annotation :*—*Generally*, **Mentd.** Hartley *v* Hymans, [1920] 3 K. B. 475.

1138. *Add. Annotation :*—*As to* (2) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

1153. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1160. *Add. Annotations :*—*As to* (1) **Refd.** The Joannis Vatis (1921), 91 L. J. P. 182. *Generally*, **Mentd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1168. *Add. Annotation :*—**Mentd.** Goldrei, Foucard *v.* Sinclair & the Russian Chamber of Commerce in London (1917), 87 L. J. K. B. 261.

Part VIII.—Relations between Principal and Agent.

1175. *Add. Annotation :*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240.

1176. *Add. Annotations :*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240; Maskell *v.* Hill, [1921] 3 K. B 157. **Mentd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

1186. *Add. Annotation :*—*Generally*, **Mentd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

1196. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1206. *Add. Annotations :*—**Consd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186. **Apld.** Finn *v.* Shelton Iron, Steel & Coal Co. (1924), 131 L. T. 213; Hilton *v.* Westminster Bank (1926), 135 L. T. 358. **Refd.** Weigall *v.* Runciman (1916), 85 L. J. K. B. 1187; Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226. **Mentd.** Manbre Saccharine Co. *v.* Corn Products Co., [1919] 1 K. B. 198; Johnson *v.* Taylor, [1920] A. C. 144; Wilson, Holgate *v.* Belgian Grain & Produce Co., [1920] 2 K. B. 1; Diamond Alkali Export Corpn. *v.* Bourgeois, [1921] 3 K. B. 443.

1208. *Add. Citation :*—13 Asp. M. L. C. 463.

1208a. —— ——.]—Vale (J.) & Co. *v.* Van Oppen & Co., Ltd. (1921), 37 T. L. R. 367.

1211. *Add. Annotations :*—**Apld.** Weigall *v.* Runciman (1916), 13 Asp. M. L. C. 463. **Refd.** Finn *v.* Shelton Iron, Steel & Coal Co.

carry out its terms; & this is not shown where there does not appear to have been any holding out of such agent by the principal either to the purchaser directly or by circumstances of publicity which reached him & upon which he acted.—Zerebesky *v.* Powell, [1921] 3 W. W. R. 528.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 2.

1086 i. *Purchase — Acceptance of goods bought.*]—Where an agent, authorised to buy goods of a certain kind, buys goods of a different kind, if the principal for whom they are bought, though repudiating the contract & returning most of the goods, keeps part of them, he thereby does an act in relation to the goods which is inconsistent with the ownership of the seller, & so accepts them, & in so doing ratifies the purchase.—Bontex Importing Co. *v.* Panar (1922), 63 D. L. R. 200; [1922] 1 W. W. R. 128.—**CAN.**

1100 iv. —— —— *Paid by cheque of unauthorised agent.*]—S. took part in the negotiations for the sale of an engine by applt. to resp., but was not applt.'s agent either to effect the sale or to collect the purchase-money. After the sale resp. paid the money to S., thinking that he was applt.'s agent, & a few days later S. told applt. that he had received the money but could not pay it over then, & offered to pay interest on it, to which applt agreed. After several applications from applt. S. handed him a cheque for the balance shown to be due in an accom[illegible] statement, in which S. debited [illegible] with interest & took credit for [illegible] mission. Applt. accepted the cheque & paid it into his account, but it was dishonoured & he then sued resp. for the purchase-money :—*Held :* applt.'s accentance of the cheque was a clear adoptive act evidencing his ratification of S.'s unauthorised act in receiving the money.—McEwan *v.* Johnstone. [1918] N. Z. L. R. 49.—**N.Z.**

sm. —— *Demand for payment over of deposit.*]—Where an agent had no authority to sell on the terms on which he did sell :—*Held :* a letter of the principal, demanding payment of the money received by the agent as a deposit, did not ratify the action of the agent in selling.—Pringle *v.* M'Kay, [1922] N. Z. L. R. 818.—**N.Z.**

1104 iii a. —— ——.]—Where a principal, knowing the full circumstances of the signing of an agreement for sale & purchase of land by an [illegible] on his behalf, does not notify the purchaser of his repudiation for nearly three years he is estopped by his acts & conduct from objecting to the agreement.—West *v.* Dillican, [1921] N. Z. L. R. 617—**N.Z.**

PART VII. SECT. 6, SUB-SECT. 3.

1127 i. *On person alleging ratification.*]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—Thomson *v.* Lynne. [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 1.

1122 iii. ——.]—An act done by a person on behalf of another [illegible] but without that other person's [illegible] rity or knowledge, & subs[illegible] ratified by that other creates the relationship of principal & agent between the parties in respect of that act.—Great West Farms, Ltd. *v.* Hansberger, [1924] 1 D. L. R. 185.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 2.

sn. *Trading goods—Agent for sale.*]—If an agent for sale of goods trades them for other goods & the principal ratifies the transaction, the goods received in exchange be[illegible] principal's property. Rex *v.* Hicks & Keen, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402, 19 [illegible] L. R. 492.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.—A.

1184 v. —— —— *not in accordance with order.*] Defts. gave to pltf. a written order to ship from England on account of [illegible] thousand two-gallon & two hundred & fifty three-gallon stoneware jars. Pltf. ordered jars from a manufacturer in England to be shipped in [illegible] of this order. Two lots [illegible] & delivered to defts who paid for them. Delivery of the last lot, which comprised thirty-nine three-gallon & three hundred & forty-two two-gallon jars, was refused by defts on the ground that there were twenty-three more of the three-gallon jars & twenty-five less of the two-gallon jars than had been ordered, & also that the mouths of a large number of the jars were not of the specified size :—*Held :* pltf. was under a duty to purchase goods for defts. of the description ordered, & his failure to do so amounted to a breach of duty.—Bultjus *v.* Roope, [1922] N. Z. L. R. 549.—**N.Z.**

1186 ii. —— ——.]—Wheat held by defts. for pltfs. was on pltfs.' order shipped by defts. from M. to A. [illegible] to sell at once. Defts. wrote [illegible] that until the cars arrived at A. they were unable to sell. They at [illegible] however, tried to sell & after ten [illegible] did so :—*Held :* they were [illegible] in selling at the price then [illegible] & without receiving further instructions.—Jackson *v.* Saskatchewan Co-operative Elevator Co., Ltd., [illegible] W. W. R. 672.—**CAN.**

(1921), 131 L. T. 213. **Mentd.** Spencer *v.* Ashworth, Partington (1925), 94 L. J. K. B. 447.

1243a. —— **Extent of liability.**]—Pltf. employed deft., a chartered accountant, to investigate the affairs of a co. in which he was interested. In a letter of instructions to deft. pltf. inserted libellous statements concerning two officials of the co. Deft. handed the letter to his partner, who negligently left it at the co.'s office. The manager found it, read it, & communicated its contents to the two persons defamed, each of whom sued pltf. for libel & obtained judgment against him for damages & costs. Pltf. then sought to recover from deft. the amount which he had paid for damages & costs in the libel actions as damages for breach of an implied duty to keep secret the letter of instructions:—*Held:* pltf.'s liability for damages in the libel actions did not result from deft.'s breach of duty, & deft. was liable for nominal damages only.—WELD-BLUNDELL *v.* STEPHENS, [1920] A. C. 956; 89 L. J. K. B. 705; 123 L. T. 593; 36 T. L. R. 640; 64 Sol. Jo. 529, H. L.

Consd. *Re* Polemis & Furness Withy, [1921] 3 K. B. 560; A. & B. Taxis *v.* Secretary of State for Air, [1922] 2 K. B. 328; Harnett *v.* Bond, [1924] 2 **Refd.** Proops *v.* Chaplin (1920), 37 T. L. R. 11; Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127; The San Onofre, [1922] P. 243; Adelaide S.S. Co. *v.* R., [1923] 1 K. B. 59; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 46 brook *v.* Stokes, [1925] 1 K. B. 141; Britannia Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; S... ... *v.* Paludina (Owners), The Paludina

1250. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce, [1925] Ch. 407.

1251. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

After this case add "*See, generally*, COMPANIES, Vol. IX., pp. 553 *et seq.*"

1265. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1267. *Add. Annotations:*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626; Everett *v.* Griffiths, [1920] 3 K. B. 163.

1269. *Add. Annotations:*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626; Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42; Pratt *v.* Patrick, [1924] 1 K. B. 488. **Mentd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

PART VIII. SECT. 2, SUB-SECT. 2.—A. (a).

1214 iv. — — *Negligent misrepresentation.*]—An agent who in breach of his duty to his principal induces him by negligent misrepresentation to enter into a contract is liable to make good to his principal the loss arising therefrom.

In such a case the principal may recover either in tort or in contract, & it is no answer to his claim that he is also entitled to recover from the other party to the contract induced by his agent.—YOUNG *v.* TASSELL, [1918] N. Z. L. R. 924.—**N.Z.**

1214 v. — —.] The duty of a paid agent to his principal is to exercise care, skill, & honesty, & if he takes on himself to convey information which he considers it material that his principal should know, & which he recommends & intends his principal to adopt, it is his duty to use reasonable care & skill in ensuring the accuracy of that information.—BROWN *v.* THOMAS, [1920] N. Z. L. R. 306.—**N.Z.**

PART VIII. SECT. 2, SUB-SECT. 2.—B. (b).

1245 iv. — — —.]—A law-agent, to whom a client entrusted money for investment on heritable security to yield 5 per cent., invested £1,000 of the amount in 1903 on a heritable bond which bore to be secured over tenement property, & £200 on a postponed bond over other subjects. These properties both belonged to another client of the agent's firm, who, in 1905, died insolvent, & heavily indebted to the firm. He had granted an *ex facie* absolute disposition of the tenement property in favour of the firm prior in date to the bond for £1,000, which loan was accordingly not validly secured; & the postponed bond for £200 was worthless, as the prior bond exhausted the value of the security subjects. None of these facts were communicated to the lender:—*Held:* while the agents were not guilty of negligence in investing the money as they did in 1903, in view of the fact that they were called upon to obtain a 5 per cent. investment, they were guilty of negligence upon the death of the borrower in 1905, in respect that, a conflict of interest having then arisen between them & the lender in connection with the £1,000 bond, they failed to inform their client of the position, failed to realise her investments, & failed to advise her to seek independent advice.—WERNHAM *v.* M'LEAN, & NEILSON, [1925] S. C. 407.—**SCOT.**

1260 i. *Factor.*]—Where advances are made by a factor on the security of a world commodity, such as grain, consigned to him for sale, it is his duty to deal with the goods in such a way as to guard, not only himself, but the principal also, against loss. There is implied in every such transaction a right on the part of the factor to realise on his security whenever the exigency of the case demands it.—UNITED GRAIN GROWERS, LTD. *v.* MABEY, [1925] 1 D. L. 1 W. W. R. **CAN.**

1262 ii. *Extent of duties.*]—If a local agent is entrusted by an absent owner with looking after & renting a furnished house, then, although he is not an insurer of the safety of the property, he must use reasonable care & diligence in its protection & preservation, & if he fails to do so he will be liable for the resulting loss. If furniture disappears or is damaged beyond reasonable wear & tear, he is *primâ facie* liable to account for it. Evidence sufficient to excuse him from liability would in some instances be quite light, in others more burdensome, depending on such questions as the checking over or not of the articles of the furniture, the character of the tenants & the constituents of the tenant's family, the value & nature of the missing articles, etc.

When the owner claims against the agent for lost or articles the question of liability may be directly involved in regard to each & that liability is a question for the judge, & in such case the value of any article or the damage done to it can be most conveniently determined by the judge when deciding the question of liability, rather than by a referee.—CARLILE *v.* NORTHERN TRUSTS CO., [1924] 2 W. W. R. 961.—**CAN.**

1264 ii. —— *Acting for vendor & purchaser—Payment of rents to vendor after notice of claim by purchaser.*]—Where an agent who acted for both parties in connection with a sale of immovable property on the terms of "cash against transfer," received the rents &, after notice that they were claimed by the purchaser, paid them over to the seller as having, in his opinion, the better title thereto:—*Held:* he was personally liable to the purchaser therefor.—DE KOCK *v.* FINCHAM (1902), 19 S. C. 136.—**S. AF.**

so. *Wool broker.*]—A wool broker, in cases where he receives wool from a customer upon which a limit has been placed, is not in law bound to indicate to the customer the state of the market from time to time, so as to be liable in damages if he fails to do so.—FERREIRA *v.* GINGELL, [1921] E. D. L. 374.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 2.—C.

1269 vii. —— —.]—Deft., an insurance broker, gratuitously procured policies from American cos.:—*Held:* as it was not shown that deft. was in any way negligent, or that he knew or ought to have known of the invalidity of the policies, deft. was not liable.—DIMITROFF *v.* GONDER (1924), 56 O. L. R. 119.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (a).

1276 i. *Failure to keep accounts—Liability for charges of accountant preparing accounts.*]—Deft., employed by pltf. to administer his affairs, exhibited gross negligence in carrying out his trust. He failed to keep proper books or records of pltf.'s affairs or to render accounts. Pltf. was compelled to employ accountants to prepare accounts between the parties:—*Held:* pltf. was entitled to claim the charges of two accountants for preparing accounts between the parties as damages due to deft.'s negligence, which deft. should have contemplated as the natural result of such negligence.—MEAD *v.* CLARKE, [1922] E. D. L. 49.—**S. AF.**

sp. *No duty to account to minor—Agent appointed by guardian.*]—An agent appointed by the guardian of a minor is not liable to account to the minor for his acts, even though he received properties belonging to the minor.—RAMATHAN CHETTIAR *v.* MUTHIAH CHETTY (1919), I. L. R. 43 Mad. 439.—**IND.**

st. *Accounts framed on wrong & containing incorrect items.*]—Deft. was employed by pltfs., the exors. of an estate, to administer the estate on their behalf. Pltfs. having sued deft. for an account;—*Held:* as the

1288. Delete, " For full anns., *see* EQUITY."

1311. *Add. Annotations :*—**Apld.** Holt *v.* Markham, [1923] 1 K. B. 504. **Distd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1315. *Add. Annotation :*—**Refd.** Camillo Tank S.S. Co. *v.* Alexandria Engineering Works (1921), 38 T. L. R. 134.

1316. *Add. Annotations :*—**Consd.** The Mogiliff, [1921] P. 236. **Mentd.** Laws *v.* Smith, The Rio Tinto (1884), 9 App. Cas. 356.

1318. *Add. Annotation :*—*As to* (1) **Refd.** Anderson *v.* Equitable Assce. Soc. of United States (1926), 134 L. T. 557.

1352. *Add. Annotation :*—**Mentd.** Yourell *v.* Hibernian Bank, [1918] A. C. 372.

1356. *Add. Annotation :*—*As to* (1) **Refd.** Yourell *v.* Hibernian Bank, [1918] A. C. 372.

1363. *Add. Annotation :*—*Generally*, **Mentd.** Yourell *v.* Hibernian Bank, [1918] A. C. 372.

1396. *Annotations :*—For "Bridger *v.* Savage (1885), 12 Q. B. D. 363" read "Bridger *v.* Savage (1885), 15 Q. B. D. 363."

Add. Annotation :—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

1409. *Add. Annotation :* —**Mentd.** Spencer *v.* Hemmerde, [1922] 2 A. C. 507.

1422. *Add. Annotation :*—*As to* (1) **Refd.** Baker *v.* Lloyd's Bank, [1920] 8 K. B. 322.

1426a. Proceeds of sale of goods—Goods consigned by commission agents for principal—Right of agent to set off claims against consignors.]—In 1917 pltf. & F., merchants at Odessa in the Russian Ukraine, consigned large quantities of pigs' bristles to a Russian bank at Odessa, as commission agents, to send the goods to England for sale & remit the proceeds to the consignors. The bank, as principals, sent the goods to defts., as their agents, who knew that pltf. & F. were the original consignors. Afterwards the revolution broke out in Russia, & in Dec. 1917, all private banks in Russia were abolished by decree of the Govt., & in 1918 their assets & liabilities were taken over by the People's Bank of the Russian Socialist Federal Soviet Republic. In 1920 the People's Bank was by further decree abolished & its assets & liabilities were transferred to the Central Budget & Accounts Administration of the Russian Socialist Federal Soviet Republic. One result of this legislation was that the head office of the Odessa bank in Petrograd was raided & its shares were confiscated, but the Odessa bank was allowed to carry on its business as usual until 1920, when it was closed by a local soviet. This permission was the result of the establishment of an independent republican Govt. over the Ukraine the Ukrainian Soviet Govt., over which the Russian Soviet Govt. claimed neither a *de facto* nor *de jure* jurisdiction, & which was also recognised by foreign powers as an independent Govt. Later on a full federation was entered into between the Ukraine Republic & the Russian Soviet Republic & recognised as a *de facto* &, recently, as a *de jure* Govt. by the Govt. of this country. During transit of the goods to England some of the goods respectively consigned by pltf. & by F. became inextricably mixed. Pltf. claimed that he was entitled to the goods consigned by him, & that F. was not entitled to set off against him claims against F. which were not connected with the goods consigned by pltf. Defts. claimed that they were entitled to set off against pltf. claims against F. which were not connected with the goods consigned by pltf. *Held* : pltf. was entitled to the goods consigned by him, & defts. were not entitled to set off against him claims against F. which were not connected with the goods consigned by pltf.—KRUGE *v.* VAN DIJK'S EXECUTORS, [1918] App. D. 110.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (e).

1326 i. *Agent for sale—Principal's intention to defraud creditors known to agent.*]—Where goods were delivered to agents for sale, & the principal, to the knowledge of the agents, intended to defraud his creditors by making away with the proceeds of the sale :—*Held :* (1) the principal in suing the agents for an account of the goods so delivered to them was not relying on an illegal contract & was entitled to succeed ; (2) the agents were not absolved from the duty of accounting to the principal by the fact that the goods had been delivered to the agents on a Sunday.—RUSKIN *v.* WASSERMAN, [1917] W. L. D. 174.—**S. AF.**

1326 ii. —— *Goods delivered to on Sunday.*]—RUSKIN *v.* WASS No. 1326 i., *ante*.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (f).

g i. —— *Particulars.*]—In an action which was substantially one clai a general account in reality on the of agency :—*Held :* an application by the agent for particulars of sums alleged to have been converted should be refused.—SHORT *v.* LAMBE, [1925] 1 I. R. 135.—**IR.**

PART VIII. SECT. 2, SUB-SECT. 3.—B. (b).

1352 ii. —— ——.]—Where fiduciary relations have subsisted between the parties, a ct. will not re-open accounts which have long been settled between the parties, unless pltf. can show definitely at least one fraudulent omission or insertion in the accounts.—PURAN MAL *v.* POND MACDONALD, ETC. (1919), I. L. R. 41 All. 635.—**IND.**

1352 iii. —— —— ——.] RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 3. C.

1361 i. *Circumstances in which right arises.*] RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1. **IND.**

PART VIII. SECT. 2, SUB-SECT. 4.—A. (a).

1379 i. *Deposit on purchase paid to land agent.*]—A licensed land agent who does not hold from his principal a written authority to sell, & who, having effected a sale of his principal's land, has received from the purchaser, without his principal's knowledge, a deposit, is not entitled to retain thereout his commission, but must account to his principal for the whole of such deposit.—SMITH *v.* BASON, [1921] N. Z. L. R. 467.—**N.Z.**

1379 ii. —— ——.]—Where a deposit on a sale of land is paid to a land agent he holds it, unless otherwise stipulated as agreed, for the vendor, & must pay it over to him on demand, subject to the agent's right to apply the same in payment of expenses, commission, or other charges incidental to the sale ; but the commission does not include commission which is made irrecoverable by law.—BUCHANAN *v.* SAMSON, [1922] N. Z. L. R. 558.—**N.Z.**

sw. *Money paid to agent by members of syndicate for purchase of land. Claim by one member of syndicate for return of subscription on rescission of sale.*]—Pltf., who had joined with a number of other persons in the purchase of a farm, subscribed £50 which was, with other subscriptions, deposited with deft. to be by him paid out in reduction of the purchase-price. The sale of the farm having been cancelled, to a claim by pltf. for the return of his subscription deft. raised the defence that he had been instructed by the syndicate not to pay over the money received by him but to hold it for another purpose :—*Held :* the defence raised could not succeed.—MANGENA *v.* MOYATSI, [1918] App. D. 650.—**S. AF.**

sa. *Profits received in foreign currency. Rate of exchange in favour of* [illegible] *v.* BUCKELL (1925), 57 O. L. R. 113 ; *affd.*, [1926] 1 D. L. R. 353. **CAN.**

[illegible] *from principal. Right of agent to recover from sub-agent.*] Pltf. listed with deft. as a sub-agent the lands of a certain principal, agreeing to pay deft. 2½ cents an acre for finding a purchaser. Deft., unknown to pltf., communicated directly with the principal, obtained a listing of the lands from him & effected a sale thereof, deducting the commission : *Held :* pltf. was entitled to recover from deft. the commission less the sum of 25 cents per acre.—OSWALT *v.* KING, [1919] 3 W. W. R. 72. **CAN.**

PART VIII. SECT. 2, SUB-SECT. 4.—A. (c).

[illegible] a transaction between brokers & their principal was an illegal one, & the brokers paid the proceeds to a person [illegible] the [illegible] of their principal to receive it : *Held :* the principal could recover proceeds from the agent.—[illegible]AN *v.* BURDICK BROTHERS, [1923] 4 [illegible] L. R. 852 ; 3 W. W. R. 785 ; re[illegible]ng, [1923] 1 D. L. R. 1165 ; 31 B. C. R. 175.—**CAN.**

ably mixed, with the result that F. assigned all his rights in his consignment to pltf., & notice of the assignment was given to defts. Before the closing of the bank at Odessa the bank ceded all their rights in the bristles consigned to them to pltf. & F. The bristles consigned to defts. were sold by them in 1920, & pltf. demanded payment of the amount of the proceeds, less the amount of defts.' commission, but defts. refused payment, alleging (*inter alia*) that the goods belonged to the bank at Odessa & that defts. were entitled to set off against pltf.'s claim a debt due to them from the People's Bank in Russia & the Russian Soviet Govt., & pltf. in 1923 brought this action:—*Held:* (1) assuming that the bank at Odessa was an effective bank up to the time when the bank was closed, the bank's instructions to defts., followed by the transfer of the bank's rights to pltf. & F. & the transfer of F.'s rights to pltf., made it clear that the bank's title to the bristles had gone; (2) assuming that the bank was non-existent & that some other person or persons had given the instructions to sell, the sale by defts. was without the authority of the bank, & in that case the bank's title had gone. In either case pltf. as a disclosed or undisclosed principal was entitled to the proceeds, less defts.' commission with interest from the date of the demand. DORF *v.* NEUMANN, LUEBECK & Co. (1924), 40 T. L. R. 405.

1459. *Add. Annotations:*—*Generally*, **Refd.** Dominion Coal Co. *v.* Maskinonge S.S. Co. [1922] 2 K. B. 132. **Mentd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423; Taylor *v.* Davies, [1920] A. C. 636.

1460. *Add. Annotation:*—**Refd.** Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132.

1467. *Add. Annotation:*—**Refd.** Rawlings *v.* General Trading Co., [1920] 3 K. B. 30.

1482. *Add. Annotations:*—**Apld.** Mortimer *v.* Beckett, [1920] 1 Ch. 571; Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372. **Consd.** Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609.

1484. *Add. Annotation:* **Refd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

1486. *Add. Annotation:*—**Consd.** Davey *v.* Robinson, [1923] 1 K. B. 563.

1490. *Add. Annotations:*—**Refd.** Dutton, Massey (Liverpool) *v.* Dutton, Massey (1923), 40 R. P. C. 413; Harrods *v.* Harrod (1924), 40 T. L. R. 195; Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce., [1925] Ch. 675.

1491. *Add. Annotation:*—**Mentd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

1501a. Agent wrongfully acting for other principals —Liability of party inducing agent to commit breach of duty.]—Resps. employed D. as their agent to buy tobacco from growers, the total bought not to exceed 300,000 lbs., & supplied him with forms of contract bearing their firm name as buyers. D. agreed not to act as buying agent for anybody except resps. & another firm. Applt., who knew the position as between D. & resps., induced him to buy in the names of the two firms a total of 1,100,000 lbs., arranging with him to take over the surplus not required for them. Out of that total weight D. handed 300,000 lbs. to resps., & tendered the balance to applt., but he repudiated the arrangement, the market having fallen heavily. Resps. having also repudiated liability, one of the vendors, with whom D. had contracted upon resps.' form, was held to be entitled to damages from resps. as having held out D. as their agent. Resps. claimed to recover over from applt.:—*Held:* resps. were so entitled, applt. having knowingly induced D. to commit a breach of his duty to them, whereby they had suffered the damage.—JASPERSON *v.* DOMINION TOBACCO Co., [1923] A. C. 709; 92 L. J. P. C. 190; 129 L. T. 771, P. C.

1505. *Add. Annotation:*—*As to* (1) **Refd.** Spencer *v.* Hemmerde, [1922] 2 A. C. 507.

1508. *Add. Annotations:*—**Refd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423; Taylor *v.* Davies, [1920] A. C. 636.

1509. *Add. Annotations:*—**Refd.** Taylor *v.* Davies, [1920] A. C. 636; *Re* Claridge's Patent Asphalte Co., [1921] 1 Ch. 543.

1513. *Add. Annotations:*—**Refd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423; Taylor *v.* Davies, [1920] A. C. 636.

1526. *Add. Annotation:*—*As to* (2) **Refd.** Wright *v.* Morgan, [1926] A. C. 788.

1529a. —— Unless full disclosure—Sufficiency of disclosure.]—Deft. bought shares in the B. Co. on the recommendation of T., who was in the office of E. & Co., stockbrokers. E. & Co. carried through the transaction & sent deft. two contract notes, on which were the words "bought of ourselves as principals," & no commission was charged. By arrangement deft. paid 25 per cent. of the price of the shares, the balance being carried over. E. & Co. subsequently became bkpt. & their trustee in bkpcy. claimed the balance then due on the account from deft.:—*Held:* E. & Co. had made a sufficiently full & accurate disclosure to deft. that they were selling as principals & deft. with full knowledge gave his assent to their position, & the trustee's claim succeeded.—ELLIS & Co.'s TRUSTEE *v.* WATSHAM (1923), 155 L. T. Jo. 363.

PART VIII. SECT. 2, SUB-SECT. 5.

so. *General rule.*]—Where money recoverable by a principal from an nt as having been received by the on the principal's behalf, the is not as a rule liable for interest by virtue of an express agreeor of some mercantile usage.—LMAN *v.* CHINTAMANI (1918), I. L. R. All. 254.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 7.

1464 v a. —— ——.]—Pltf. supp money for the purchase of land of which deft. took the deed in his own name. In an action to have deft. declared a trustee & for the recovery of meane profits the defence was that the price was furnished by pltf. with the intention that the land should be deft.'s & that pltf. should have a home with deft. during her lifetime pltf. was entitled to — ENNOS *v.* MCLEAN (1919), 52 N. S. R. 485.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 9.—A.

11. —— *Agent lending money to to whom agent not*]—A suit by a principal an agent for the recovery of money lent to persons to whom the agent was not authorised to lend, is a suit for an ordinary money account & is governed by art. 89 & not art. 90 of Limitation Act (ix. of 1908).—MUTHIAH CHETTY *v.* ALAGAPPA (1917), I. L. R. 41 Mad. 1—**IND.**

PART VIII. SECT. 2, SUB-SECT. 10.

1530 i. —— *Remedies of principal—may repudiate or adopt*.]—A principal who discovers that he has purchased his own property may elect either to repudiate the contract or to affirm it. If he wishes it to stand & also claims the resulting profit, he must show that such profit arises from transactions completely covered by the prohibitive operation of the relationship between him & the agent.—ROBINSON *v.* RANDFONTEIN, ETC., [1921] App. D. 168.—**S. AF.**

1532. *Add. Annotation :*—**Mentd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

1533. *Add. Annotations :*—**Reld.** *Re* Jubilee Cotton Mills, [1922] 1 Ch. 100. **Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

1550a. —— **Broker.**]—Applt. employed a broker to make speculative purchases of cotton for him, & became heavily indebted to him owing to the fall of prices in the cotton market. The broker, as he was entitled to do by the terms of his agency, closed the account by selling the cotton which he had bought for applt. He sold (*inter alia*) two lots of foreign cotton to different jobbers at the respective market prices of the day & immediately bought back from the same jobbers at the same prices equivalent amounts of cotton of the same description. The broker having assigned his property for the benefit of his creditors, resp. as trustee of the deed of assignment, sued applt. to enforce the broker's claim to be indemnified. The trial judge found that there was a real sale & a real purchase of the cottons in question, & the Ct. of Appeal accepted this finding :—*Held :* the simultaneous re-sale to the broker did not vitiate the sale by the broker & the account was effectually closed.—Christoforides *v.* Terry, [1924] A. C. 566 ; 93 L. J. K. B. 481 ; 131 L. T. 84 ; 40 T. L. R. 485, H. L.

1552. *Add. Annotation :*—*Generally*, **Reld.** Christoforides *v.* Terry, [1924] A. C. 566.

1553. *Add. Annotation :*—**Apld.** Christoforides *v.* Terry, [1924] A. C. 566.

1558a. —— ——.]—Imeson *v.* Lister (1920), 149 L. T. Jo. 446.

1561. *Add. Annotations :*—*As to* (1) **Reld.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566. *Generally*, **Mentd.** Keen *v.* Mear, [1920] 2 Ch. 574 ; Jones (Holloway) *v.* Woodhouse, [1923] 2 K. B. 117.

1580. *Add. Annotation :*—**Reld.** Hocker *v.* Waller (1924), 29 Com. Cas. 296.

1584. *Add. Annotations :*—*Generally*, **Mentd.** London County & Westminster Bank *v.* Tompkins, [1918] 1 K. B. 515 ; Ellis' Trustee *v.* Dixon-Johnson, [1924] 1 Ch. 342.

1598. *Add. Annotation :*—**Mentd.** Glicksman *v.* Lancashire & General Assce., [1925] 2 K. B. 593.

PART VIII. SECT. 2, SUB-SECT. 11.

1542 vi. ——.]—An agent employed to sell goods cannot himself purchase such goods at a sale by public auction. —Osry *v.* Hirsch, [1922] C. P. D. 531.—**S. AF.**

1565 i. —— —— —— *No confirmation without knowledge.*]—In order to establish acquiescence or ratification on the part of pltf. it must be shown that he has, either by word or deed, & with a full knowledge of the circstances abandoned his rights.—Osry *v.* Hirsch, [1922] C. P. D. 531.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 13.

1572 ii. ——.]—In pursuance of an agreement defts. obtained for pltf. a mtge. of £100,000 at 5 per cent., but without pltf.'s knowledge entered into an agreement with the mtgee. by which, in consideration of a commission of ¼ per cent. per annum to be paid to them by the mtgee. out of the interest payable by pltf., they agreed to guarantee the payment of principal & interest, & under that agreement defts. were paid by the mtgee. £2,500, being £250 each half-year during the term of the mtge. In an action by pltf. against defts. to recover the) as being a secret profit made by them while acting as his agent :—*Held :* pltf. was entitled to payment to him of the £2,500.—Keogh *v.* Dalgety & Co. (1916), 22 C. L. R. 402.—**AUS.**

1572 iii. ——.] —An agent has no right to receive remuneration other than from his principal, unless there is a contract express or implied to that effect.—Smitle *v.* Slattard (1919), 21 W. A. L. R. 19.—**AUS.**

1572 iv. ——.]—Where one man stands to another in a position of confidence involving a duty to protect the interests of that other, he is not permitted to make a secret profit at the other's expense or to place himself in a position where his interests conflict with his duty.—Robinson *v.* Randfontein, etc., [1921] App. D. 168.—**S. AF.**

1572 v. ——.]—A. authorised B., his agent, to sell property for a certain sum, A. agreeing to take a portion of the purchase price in cash & a mtge. bond on the property for the balance. B. sold the property for the stipulated amount, but without the knowledge or consent of A. obtained & retained a commission from the purchaser for raising the bond :—*Held :* such commission was a secret profit, & B. in it had acted
A.— Levin *v.* Levy,
T. P. D. 702.—**S. AF.**

sd. —— *Agent receiving* ...
Disclosure, after completion of a sale of land, by the vendor to certain
a who con-
cerned in the for the purchase, of his intention,
carried out, to make a money
to the purchaser's *manager* &
who took the principal part in the
assent thereto by such
directors, is not effective to prevent rescission on the basis of secret profit to the agent if the vendor has, prior to the completion, secretly led the agent to expect that he would receive a substantial sum in the event of the sale being completed, & it is immaterial that the vendor's motive was to a large extent to recoup the agent for out-of-pocket expenses.—Bendigo, etc. Co. *v.* Cunningham, [1919] V. L. R. 387.—**AUS.**

sl. —— *Agent entering into contract with principal.*]—If an agent, without disclosing that he is the person dealing, himself enters into a contract with his principal, the latter on discovering the fact can have the transaction set aside, & it is immaterial whether there has been fraud or not, or whether the transaction is advantageous or otherwise to the principal.—Achutha, etc. *v.* Oakley (1922), I. L. R. 45 Mad.

1581 iii. ——.] There are where an agent is entitled to retain profits, such as (1) where the connection between the agency & the profit is accidental, (2) where the transaction producing the profits is outside the scope of the agency & no conflict between duty & interest arises, (3) where the principal on account of his clear knowledge is deemed to waive his right to profits by his implied
—Union Government *v.* Ch
[1918] C. P. D. 462.—**S. AF.**

1581 iv. —— ——.]—Pltf. a written agreement by which he to pay defts. 2½ per cent. on ... if defts. sold property for that sum, authorised defts. to keep any amount paid for the property in excess of that sum. Pltf. claimed a refund of the commission retained by the agent on the ground that he had secretly obtained a commission from the purchaser. The commission obtained by defts. from the purchaser, who had to pay cash to pltf., was for raising loans to enable her to pay the seller :—*Held :* as the commission obtained from the purchaser by defts. was not a commission on the price, but in respect of an entirely different transaction, his conduct was perfectly & he had not forfeited his to be paid a commission by pltf.—Stanton *v.* Humphrey, [1923] E. D. L. 419.—**S. AF.**

1589 i. — — *Remedies of principal—Principal may repudiate transaction—Not after affirming transaction.*]—Union C. P. D. 462.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 14.

1594 iii. — —.] — *Held :* pltf. could not recover any commission, because he was in a position where his interest was opposed to that of his principal, so that he had a temptation not to perform faithfully his duty, & failed to disclose the facts.—D'Arcy *v.* Land (1920), 47 N. B. R. 52 D. L. R. 660.—**CAN.**

sk. — — *Agent to raise money himself.*]—Under a contract between a principal & a financial agent, by which the agent agrees to raise sums of money for the principal upon first & second mtges., at stated rates of interest, of the principal's land, it is not illegal for the agent to find the money himself, unless there is a special stipulation to the contrary ; the fact of the rates of interest being specified prevents a conflict of interest & duty in the agent.—Dalgety *v.* Gray, [1919] V. L. R. 586.—**AUS.**

ml. — — *Agent acting for both* .]—The rules applicable to for the sale of land do not apply to a middleman employed merely to bring the vendor & purchaser together to enable them to make their own bargain ; neither such a middleman nor the vendor is obliged to inform the purchaser of the payment by the vendor of a commission for introducing the purchaser.—Clark *v.* Hepworth, [1918] 1 W. W. R. 147 ; 39 D. L. R. 395 ; 55 S. C. R. 614.—**CAN.**

sl. —— *Agent option to*
Lucey (No. 1)
68 D. L. R. 89 ; 55 N. S. R. 84 ; *affd.*, [1925] 1 D. L. R. 101.—**CAN.**

1600. *Add. Annotation :—Generally,* **Mentd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

1621. *Add. Annotation :—Generally,* **Mentd.** Clarkson *v.* Davies, [1923] A. C. 100.

1626. *Add. Annotations :*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19. **Mentd.** Slater *v.* Hoyle & Smith, [1920] 2 K. B. 11.

1632. *Add. Annotations :—As to* (1) **Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19. **Refd.** Taylor *v.* Oakes, Roncoroni (1922), 127 L. T. 267. *As to* (2) **Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234.

1635. *Add. Annotation :*—**Apld.** Alexander *v.* Webber, [1922] 1 K. B. 642.

1638a. —— ——.]—Pltf. agreed to purchase a motor car from deft., & in accordance with the agreement he paid a deposit. Pltf. afterwards purported to repudiate the contract, wrongfully, as the judge found. During the pendency of an action by him for the recovery of the deposit pltf. died, & his exors. were substituted as pltfs., & they then discovered that at the time the contract was entered into deft. had promised, without the knowledge of pltf., to give pltf.'s chauffeur a share of the profit on the sale of the car if pltf. bought it. On the ground of that secret arrangement the exors. now sought to avoid the contract & to recover the deposit: *Held:* the surreptitious dealing between deft. & pltf.'s chauffeur was a fraud on pltf.; the fact that pltf., when he purported to repudiate the contract, was not aware of the fraud, did not prevent his exors. from now relying upon it; & they were entitled on the ground of the fraud to avoid the contract & to recover the deposit.—ALEXANDER *v.* WEBBER, [1922] 1 K. B. 642; 91 L. J. K. B. 320; 126 L. T. 512; 38 T. L. R. 42.

1643. *Add. Annotations :*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19. **Mentd.** Slater *v.* Hoyle & Smith, [1920] 2 K. B. 11.

1649. *Add. Annotation :—As to* (1) **Refd.** Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226.

1656. *Add. Annotation :—Generally,* **Mentd.** Ruffy-Arnell, etc., Co. *v.* R., [1922] 1 K. B. 599.

1662. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

1664. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

PART VIII. SECT. 2, SUB-SECT. 15.—A.

1601 j a. ——.]—If the agent for the vendor in a sale of real property receives commission from the purchaser also, the vendor is entitled to recover the amount of such commission from the agent, notwithstanding that the sale of the property has been completed.—FOSTER *v.* BEAUME, [1924] 2 D. L. R. 951; *revsg.*, [1923] 1 D. L. R. 51; 54 O. L. R. 245. —CAN.

PART VIII. SECT. 2, SUB-SECT. 15.—B.

sm. *Agent to do repairs — Agent work himself.*]—Defts., house-agents, acted as agents for pltf. to collect the rents & to do the necessary repairs to her property. Defts. were originally appointed in 1908, & up to 1911 had the repairs executed by outside contractors. In 1911 defts. opened their own repairs yard, did the repairs themselves, & charged the "usual trade prices," which included a profit. Quarterly statements of account were regularly furnished by defts. to pltf. from the commencement of the agency. Pltf. claimed to have the accounts reopened on the ground that she had been charged a secret profit by defts. on the repairs executed by them in addition to their commission:—*Held:* as pltf. knew & approved of the repair work being executed by defts., & defts. had made sufficient disclosure to pltf. that they were charging a profit, & the charges were not shown to have been unfair or unusual, pltf. was not entitled to have the accounts reopened.—SHERRARD *v.* BARRON, [1923] 1 I. R. 21. IR.

PART VIII. SECT. 2, SUB-SECT. 15.—D.

1635 iii. —— ——.] Any secret benefit given by one contracting party to the agent of another with the intention of influencing his mind in favour of the donor is a bribe, which entitles the other contracting party to claim to set aside the contract.—DAVIES *v.* DONALD, [1923] C. P. D. 295.—S. AF.

PART VIII. SECT. 3, SUB-SECT. 1.—A.

1664 xiv a. ——.]—Pltf. not allowed to recover commission on exchange of deft.'s land, as there was no agreement in writing to pay such commission as required by Alberta Stat. 1906, c. 27.—NUNNELEY *v.* BLATT, [1919] 2 W. W. R. 699; 47 D. L. R. 254.—CAN.

1664 xiv b. ——.]—Alberta Stat. 1906, c. 27, applies only to the case of a vendor's agent & does not apply to a commission or other remuneration claimed by a purchaser's agent.—POTTER *v.* LANDEN, [1920] 3 W. W. R. 1075.—CAN.

1664 xiv c. ——.]—Under an oral agency agreement an agent claimed commission for selling at a lump sum certain property. Shortly before the trial, Alberta Stat. 1906, c. 27, was amended:—*Held:* (1) the amending Act did not apply to an agreement made before its passing; (2) the agent was entitled to compensation, fixed at the commission rate on the fair proportionate value of the goods, for sale of the chattels.—FILTEAU & DE ROUSSY *v.* NESBITT, [1920] 2 W. W. R. 892; 53 D. L. R. 514; 15 Alta. L. R. 522.—CAN.

1664 xiv d. ——.]—An agreement for the exchange of lands was on a principal form on one side of a sheet of paper, but in two parts, the one called the offer & the other the acceptance, the one being placed immediately above the other; the lower part only was signed by deft., & the upper was signed only by the person with whom deft. was making the exchange. The upper part contained a clause by which the person signing was to pay "the regular commission"; & the lower part, signed by deft., contained the words: "I agree to pay a commission on $26,000 at 2½ per cent" on execution of the agreement to pltf.:—*Held:* the agreement to pay pltf. a commission did not satisfy Stat. Frauds, s. 13, as enacted by 6 Geo. 5, c. 24, s. 19, & amended by 8 Geo. 5, c. 20, s. 58, for the agreement was not in writing separate from the sale agreement, & an action for the commission could not be maintained.—DAVIS *v.* BEGGS (1919), 46 O. L. R. 169; 17 O. W. N. 63.—CAN.

1664 xiv e. ——.]—*Held:* the agreement to pay a commission, in order to be separate from the sale-agreement, need not be on a separate piece of paper.—HAYGARTH *v.* WEBB (1923), 54 O. L. R. 172.—CAN.

1664 xiv f. ——.]—SILVERMAN *v.* LEGREE (1919), 45 O. L. R. 107; 47 D. L. R. 713; 15 O. W. N. 278.—CAN.

1664 xiv g. ——.]—*Held:* an addition to Stat. Frauds was not retrospective, & was no bar to an action based upon an agreement not in writing entered into before its enactment.

An Act which is a bar to an action to recover an agent's commission unless the agreement therefor be in writing is also a bar, where such agreement is not in writing, to an action by him to recover damages from his principal for preventing him from earning the commission.—SMITH *v.* UPPER CANADA COLLEGE, [1921] 1 W. W. R. 1154; 57 D. L. R. 648; 61 S. C. R. 413.—CAN.

1664 xiv h. —— *Construction of agreement.*]—MCINTYRE & CO. *v.* LAW, [1918] 2 W. W. R. 359; 13 Alta. L. R. 273; 40 D. L. R. 231.—CAN.

1664 xiv j. ——.]—Land Agents Act, 1912, s. 13, prevents a land agent from recovering commission under an oral agreement extending the period fixed for his authority by the document creating it.—HOOPER *v.* ANDERSON & CO., LTD., [1918] N. Z. L. R. 119.—N.Z.

1664 xiv k. ——.]—Land Agents Act, 1912, s. 13, covers every action for remuneration for or in respect of the sale of land; & the fact that an agent is not employed to sell land but only to find a purchaser does not exclude the operation of the sect.—HOOPER *v.* ANDERSON (EDWARD) CO., LTD. (NO 2), [1919] N. Z. L. R. 65.—N.Z.

1664 xiv l. ——.]—The effect of Land Agents Act, 1912, s. 13, is to prevent the agent from recovering his commission by action.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—N.Z.

1664 xvi a. ——.]—MCLAUGHLIN & CO. *v.* BIRKS, [1925] 3 D. L. R. 968; [1925] 2 W. W. R. 690.—CAN.

1664 xxi. —— *Agent acting for syndicate—Also member of syndicate.*]—Where an agent is interested himself, along with others, in a transaction which is being carried through by him, he *primâ facie* is not entitled to charge his co-adventurers any commission.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—N.Z.

1664 xxii. —— *Soldier Settlement Act,* 1919 (c. 71), s. 61.]—A real estate agent entitled to his commission on a

1669. *Add. Annotation :*—**Reld.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1670. *Add. Annotation :*—**Reld.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1683. *Add. Annotation :*—**Expld. & Distd.** Patent Castings Syndicate *v.* Etherington, [1919] 2 Ch. 254.

1687. *Add. Annotations :*—**Mentd.** Lebeaupin *v.*

sale made before the coming into operation of the above Act.—ROWLANDS & JOHNSTONE *v.* HOLLAND (1920), 53 D. L. R. 652.—**CAN.**

1664 xxiii. —— ——.]—Deft. listed lands with pltf. for sale, & pltf. negotiated with three soldiers, although, apparently, pltf. did not get into touch with the soldiers until after July 7, 1919, when the above Act came into force. Eventually the land was sold direct by the Soldier Settlement Board to the soldiers & pltf. claimed commission from deft.:—*Held :* pltf. not entitled to commission. —TODD *v.* POTVIN, [1922] 1 W. W. R. 479 ; 63 D. L. R. 233 ; 17 Alta. L. R. 226.—**CAN.**

1664 xxiv. —— ——.]—Lands were listed with the Soldier Settlement Board at the specified price of $3,800. Deft. agreed to purchase at $3,800. The Board refused to pay more than $3,200. Deft. then arranged with the owner that the latter should transfer the lands to the Board for $3,200, which was subsequently done, & he agreed to give, & did give, his promissory notes for the difference as part of the consideration & as in increase in price : —*Held :* the above sect. did not apply. —FLOWER *v.* SANDERSON, [1922] 3 W. W. R. 464.—**CAN.**

1664 xxv. ——.]—In order to found a legal claim for commission there must not only be a causal, but also a contractual, relation between the introduction & the ultimate transaction of sale. Where there is no employment to sell express or implied, there can be no claim to remuneration. —WEEDEN *v.* TURNER (1922), 68 D. L. R. 748 ; [1922] 3 W. W. R. 623. —**CAN.**

1671 viii. —— —— ——.]—In the absence of an express contract as to the commission which a real estate agent is to receive, he is entitled to a reasonable remuneration having regard to the circumstances of the particular case. The fact that the agents in a certain town have established a custom among themselves as to the rate of commission, does not render such custom binding upon those who do business with them in the absence of notice, express or implied, that the charges for their services are to be based on such custom.—GARLAND *v.* NEWMAN (1922), 66 D. L. R. 770 ; 32 Man. L. R. 1 ; [1922] 1 W. W. R. 867.—**CAN.**

1671 ix. —— —— *When implied contract negatived.*]—Deft. advertised his business for sale in a local newspaper. The following day pltfs., having seen the advertisement, called on deft. & inquired the price. Pltfs. then entered into communication with A., who ultimately bought the business: —*Held :* deft. had never considered that he was employing pltfs. to act as his agents, & pltfs. had failed to prove any implied contract by deft. to remunerate them.—CHAPPLE *v.* MOSS, [1920] 22 W. A. L. R. 74.—**AUS.**

1671 x. —— —— ——.]—Pltf. was asked by defts. to find a purchaser for a wagon, & he succeeded in introducing to defts. H., who bought the wagon from them. Defts. denied that it was agreed that pltf. should be paid a commission, but it was admitted that they knew that he received commission for wagons sold by him. H. stated that he was sent to defts. by pltf. & would not have bought the wagon if he had not been persuaded by pltf. to do so :—*Held :* an agreement to pay commission was implied.—NICHOLAS *v.* DUMOULIN (1919), 46 D. L. R. 687.—**CAN.**

1671 xi. —— —— ——.]—An implied contract to pay a real estate agent a commission for his services if he found a purchaser for a property is negatived by the fact that the owner refused to list the property with him, although she gave him the terms upon which she was willing to sell.—TOLLEY & Co. *v.* SKUCE (1922), 63 D. L. R. 602.—**CAN.**

1671 xii. —— —— ——.]—It is not a general principle of law that whenever a man, having found out from the owner of property the terms upon which it can be sold or leased, produces a third party who will buy or lease on those terms, he thereby & without more entitles himself to payment of a commission by such owner. There must be, in addition to this, an intimation to the owner that a commission would be expected from him in the event of a sale or lease being effected upon the terms stated. The intimation of expectancy of a commission not negatived by the owner who permits the other to go to the trouble of finding a customer in the expectation of earning a commission, may well be a fact from which a promise to pay a commission may be inferred. A mere volunteer who acts as a go-between between buyer & seller & ultimately produces a sale cannot upon that fact alone found a legal claim for commission, nor can a third party, who acting for a possible purchaser, obtains from a property owner terms of sale or lease, & thus brings about a completed transaction upon those identical terms, legally claim a commission from the owner in the absence of some promise to pay a commission, either express or implied.—CHAMBERLIN *v.* MAW (1922), 68 D. L. R. 754 ; [1922] 1 W. W. R. 299.—**CAN.**

1679 iv. —— *Out of what fund payable.*]—The agent is entitled to pay himself his commission out of any money paid to him by his principal, without any appropriation by the latter. The right, however, does not extend to any sum paid to the agent by some third person on behalf of the principal.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

1679 v. —— —— *Deposit on sale of land.*]—A licensed land agent, who does not hold from his principal a written authority to sell, & who, having effected a sale of his principal's land, has received from the purchaser, without his principal's knowledge, a deposit, is not entitled to retain thereout his commission.—SMITH *v.* BASON, [1921] N. Z. L. R. 467.—**N.Z.**

1679 vi. —— —— ——.]—When a deposit on a sale of land is paid to a land agent he must pay it over to him on demand, subject to the agent's right to apply the same in payment of expenses, commission, or other charges incidental to the sale ; but commission which is made irrecoverable by law is not a just allowance deductible by the agent.—BUCHANAN *v.* [1922] N. Z. L. R. 555.—**N.Z.**

sn. *and of remuneration—Sale of property—As if free from*]—Resp. placed a farm in the hands of appts. for sale or exchange & undertook, should a sale or exchange be effected by them, to pay commission at specified rates. Appts. found a purchaser for the property & an agreement was executed whereby resp. agreed to sell the property "as if free from incumbrances." Appts. sued for commission on the full value of property unincumbered, but the trate held them entitled only to commission on the value of the equity of redemption :—*Held :* commission was payable on the gross price of the property sold.—KNYVETT & PRATT *v.* SUISTED, [1918] N. Z. L. R. 53.—**N.Z.**

1684 ia. —— ——.] *v.* PATENAUDE, [1925] 4 D. L. R. 1071 ; [1925] S. C. R. 493 ; *revsg.*, [1925] 4 D. L. R. 577 ; Q. R. 35 K. B. 333.—**CAN.**

so. *Action for commission on sale—Defence denying sale—Effect.*]—When in an action for commission on a sale the principal's pleadings deny the agreement for sale, such denial indicates his repudiation of the agreement to pay the agent, &, under the doctrine of anticipatory breach, the latter, on proving his right to the commission, is entitled to judgment for the whole amount thereof, even though under the agreement it was to be paid in instalments at dates which are yet *in futuro*.—HANTON *v.* STEDMAN, [1925] 1 W. W. R. 642.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—B. (a).

1693 vii. ——.]—A sale of land directly by the owner, after it had been listed for sale with a broker, does not entitle the latter to his commission, merely because it happened to be sold to a purchaser with whom he had negotiated in a previous transaction.—GILBERT BROTHERS *v.* MCDILL (1917), 36 D. L. R. 324.—**CAN.**

1693 viii. ——.]—Where a person discovers that another is considering the purchase of a piece of land & then ascertains from the owner that he will sell & pay a commission, but does not afterwards communicate with the prospective buyer, & the latter & the owner complete the sale themselves, there is no commission payable by the owner.—LANGTON *v.* NICHOLSON, [1918] 1 W. W. R. 908.—**CAN.**

1693 ix. ——.]—An agent for the sale of coal who had merely interviewed a customer & notified his principal that he had done so. *Held :* not entitled to a commission on an order given about two months later direct to the principal, & after an inspection of the coal by the customer. —BOND *v.* STURGEON CONSOLIDATED COLLIERIES, LTD., [1918] 2 W. W. R. 912 ; 41 D. L. R. 147.—**CAN.**

1693 x. ——.]—In the absence of a special agreement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to a commission where the owner sells to a purchaser whom he himself has found. Where the owner found the person who subsequently purchased, although the agent subsequently spoke to the same the agent was not allowed the sion.—BARAGER *v.* WALLACE, [2 W. W. R. 858 ; 48 D. L. R. 12 Sask. L. R. 301.—**CAN.**

3 xi. ——.]—Where an agent spoke to one about certain land & the latter refused to buy, but some time afterwards, hearing through another channel that the land could be rented, went to the owner's place for the purpose of renting it & was induced by the owner to buy it :—*Held :* the agent was not entitled to —TAYLOR *v.* RABBITS, [W. W. R. 1024 ; 53 D. L. R. L. R. 195.—**CAN.**

1693 xii. ——.]—Deft. desired to acquire or gain control of certain shares in a co. Pltf. outlined to him a plan, & for carrying out the arrangement one-third of the shares were to

Crispin, [1920] 2 K. B. 714; S.S. Celia *v.* S.S. Volturno, [1921] 2 A. C. 544; Soc. des Hotels Le Touquet-Paris-Plage *v.* Cummings (1921), 126 L. T. 513.

given to pltf. Pltf. worked on the undertaking & made considerable progress, but before the scheme was carried out deft. obtained what he wanted in other ways & without use of pltf.'s services:—*Held:* pltf. could not recover the agreed commission.—MACINTYRE *v.* MILLER (1922), 70 D. L. R. 218; [1922] 3 W. W. R. 529.—**CAN.**

1693 xiii. ——.]—As a general rule & in the absence of any stipulation to the contrary a principal, who employs a house agent on commission to find a purchaser for a house, retains the right as against the house agent of selling the house to a third party, who has not been introduced by the house agent directly or through another agent at any time before a proper offer is brought to him by the house agent. If by so selling he prevents the house agent from earning his proper commission he is not liable in damages, for the act of selling is a rightful act as the house agent.—BOOSE *v.* & DUNCAN, [1918] C. P. D. 283.—**S. AF.**

1693 xiv. ——.]—An auctioneer was employed to sell property by auction on condition that if the reserve price was not reached no commission was to be charged. The reserve price not being reached, the property was not sold. A prospective purchaser, who was present at the auction & who knew who the owner of the property was, was about to approach the owner after the conclusion of the auction with a view to negotiating for the purchase of the property when the auctioneer formally introduced them. After protracted negotiations the prospective purchaser bought the property:—*Held:* the auctioneer's agency terminated the moment he failed to sell by auction.—MARTIN *v.* CURRIE, [1921] T. P. D. 50.—**S. AF.**

1700 iv. ——.]—If the seller has opened negotiations with a proposed buyer, but the negotiations are broken off, & later the buyer renews the same through an agent, the agent is entitled to commission.—FITZGERALD *v.* BRICKLEY, [1924] 1 D. L. R. 38; *affd.* 25 O. W. N. 53s.—**CAN.**

1702 xxxix. ——.]—H. agreed with S., who had certain properties in his hands for sale, that he should receive half of the commission if he effected a sale. At the time a likely purchaser, C., was known to both parties. H. pressed C. to purchase, but after a time, as a matter of policy, let the matter drop, intending to approach C. again on a fitting occasion. In the meantime a member of S.'s staff indirectly approached C., who decided to purchase:—*Held:* H. had established a chain of causation between his efforts & the result, & he was entitled to half the commission.—HEALY *v.* 17 Tas. L. R. 32.—**AUS.**

1702 xl. ——.]—Pltf. as agent for the owner of certain property introduced it to A. The owner was asking £17 17s. per week. Pltf. gave A. the key, on which was a label bearing only the name of the owner. A. told pltf. the property was unsuitable, & returned the key. About a fortnight later A., through seeing the owner's name on the label & consulting the telephone directory, discovered the owner's address, & met him to discuss the letting of the property, but did not tell him that she had seen pltf. After negotiations between A. & the owner extending over some days the owner agreed to let the property to A. for twelve months at £13 13s. per week:—entitled to commission.—SYMONS *v.* CALLIL, [1923] V. L. R. 49.—**AUS.**

1702 xli. ——.]—Deft. gave to written authority to sell her and on terms, one of which was "price, very lowest, £10,000." Pltfs. brought the property under the notice of A., who got into personal communication with deft. & decided that it would suit him in every way, except as to price. After a delay of some weeks deft. & A. resumed negotiations, which led to a sale of the property to A. for £7,300:—*Held:* the relation of buyer & seller was really brought about by pltfs., who were entitled to commission.—BIRTCHNELL *v.* MORRIS, [1913] V. L. R. 201.—**AUS.**

1702 xlii. ——.]—Agent:—*Held:* entitled to recover commission.—GAMBLE *v.* EXCELSIOR LIFE ASSURANCE CO. (1917), 36 D. L. R. 592.—**CAN.**

1702 xliii. ——.]—*In 1913, deft. co.* employed pltfs., brokers, to sell its lumber property at a minimum price of $110,000.00, & agreed to pay a commission on the purchase price. During the remainder of that year & the whole of 1914, pltfs. were working on this proposition, but failed to effect a sale. In 1915 the selling price was reduced to $75,000.00. In 1916, deft. co. sold to a purchaser introduced by pltfs. for $65,000.00:—*Held:* pltfs. were entitled to commission on the purchase price.—JARDINE *v.* PRESCOTT LUMBER CO., LTD. (1917), 44 N. B. R. 505.—**CAN.**

1702 xliv. ——.]—Where land is listed with a real estate agent for sale & is afterwards sold by the vendor directly to a purchaser introduced by the agent, the latter is entitled to his commission, even though the terms of sale given in the listing as the basis on which the agent is to negotiate are not strictly adhered to.—KING *v.* [1918] 3 W. W. R. 892; 44 D. L. R. 111.—**CAN.**

1702 xlv. ——.]—NUNNELLY *v.* ONSUM, [1921] 1 W. W. R. 506; 56 D. L. R. 599; 16 Alta. L. R. 455.—**CAN.**

1702 xlvi. ——.]—Deft. agreed to pay pltfs. commission on the sale of certain land, & agreed that it was an exclusive listing, subject to notice of withdrawal, which was not given. Pltfs. submitted the land to P. on terms of the listing & introduced P. to deft., who later, without pltfs.' knowledge or consent, entered into an agreement with P. for sale of the land & of certain chattels used in farming it. The price of the land was somewhat less, & the cash payment considerably less, than as given in the listing:—*Held:* pltf. was wrongfully deprived of the right which the listing gave him to earn his commission.—GILBERT BROTHERS, LTD. *v.* KEISER (1922), 69 D. L. R. 713; [1922] 2 W. W. R. 1228.—**CAN.**

1702 xlvii. ——.]—Agent:—*Held:* not entitled to recover commission.—KENNEDY *v.* VICTORY LAND & TIMBER CO., W. W. R. 145; 68 D. L. 201 *revsd.*, [1922] 3 W. W. R. 70 D. L. R. 568.—**CAN.**

1702 xlviii. ——.]—If the relation of buyer & seller is really brought about by the act of the agent, he is entitled to a commission although the actual sale has not been effected by him, but he must show that some act of his was the *causa causans* or the efficient cause of the sale.—BUNTING *v.* HOWLAND & WATKINS (1923), 33 B. C. R. 291.—**CAN.**

1702 xlix. ——.]—Deft. wishing to sell his house placed it in an agent's hands, fixing a net price. The agent introduced P. but deft. cancelled the agent's instruction to sell. Some time later deft. & P. agreed upon terms & a sale resulted:—*Held:* commission was payable on the amount P. first offered through the agent.—FRASER *v.* HARRISON, [1924] 1 D. L. R. 765; 56 N. S. R. 431.—**CAN**

1702 l. ——.]—Pltf. procured A., B., & C. to enter into an agreement to purchase deft.'s mineral claims on certain terms of payment, upon which pltf. was to receive a commission as payments were made from time to time. Under this agreement a portion of the purchase price was paid & pltf. got his commission, but the agreement was afterwards cancelled. Subsequently E., who had advanced to A. a considerable part of the money paid by him under the agreement, entered into an agreement direct with deft. to purchase the claims paying $10,000 down, & pltf. sought to recover commission on that sum:—*Held:* pltf. was not the effective cause of the sale.—OLSEN *v.* PEARSON, [1924] 1 D. L. R. 1097.—**CAN.**

1702 li. ——.]—An agent gave G. a card to view certain property. After inspection G. decided not to buy as the price was too high. Some months later G. saw a "for sale" notice on the property which reminded him that he had previously inspected the property. He then, without further communication with the agent, negotiated with the owner direct & purchased for a smaller amount:—*Held:* the *causa causans* of the sale was the previous introduction through the agent who was entitled to his commission on the lower purchase price.—DOYLE *v.* GIBBON, [1919] T. P. D. 220.—**S. AF.**

1702 lii. ——.]—Certain property given for sale by the owner to an auctioneer at a fixed commission was not sold, the reserve not being reached, & was thereafter given to the auctioneer for sale privately. L., on passing the property, saw a notice up referring intending purchasers to R., but being aware of the fact that the auctioneer had been selling the property went to the auctioneer, who referred him to the owner. L. thereupon went direct to the owner & bought the property after having told him that he came on his own behalf & not at the instance of any agent:—*Held:* the auctioneer was entitled to his commission.—TREGASKES *v.* E, [1922] T. P. D. 317.—**S. AF.**

1702 liii. ——.]—Where a vendor concludes a contract of sale with a party with whom his real estate agent has been negotiating in ignorance that he is such a party, the agent is entitled to his commission if the circumstances are such that the vendor ought to have made inquiries which would at once have revealed the facts.—GRIFFITHS *v.* [1925] 4 D. L. R. 976.—**CAN.**

sp. —— *Purchaser acting behind agent's back.*]—*Held:* principal liable to pay full commission on conclusion of a contract of sale with the purchaser.—MERRITT *v.* DOHERTY, [1925] 3 D. L. R. 797.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—B (b).

1706 ix. Delete the words "& entitled to commission."

1706 xiii. —— ——.]—Pltf. introduced to deft. A., who wished to purchase a property for his son, B. Deft.'s house was eventually transferred to the trustees of C.'s estate, in which A.'s family was interested, & the purchase-money was paid by the trustees at the instance of A. Deft. that another agent, though

1718. *Add. Annotation :—As to* (2) **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1726. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1739. *Citations :*—For the existing citations substitute as follows :—
(1887), as reported in 58 L. T. 96 ; 3 T. L. R. 836, H. L.
Annotations :—For "**Mentd.** Barnett *v.* Isaacson (1888), 4 T. L. R. 595," read "**Refd.** Barnett *v.* Isaacson (1888), 4 T. L. R. 595."
Add. Annotations :—Generally, **Mentd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626 ; Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1740. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1741. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

aware of A.'s inspection of the house, obtained B.'s signature to the contract of sale :—*Held :* the verdict should be entered for pltf.—WEBSTER (A. G.) & SONS, LTD. *v.* COTTON (1919), 15 Tas. L. R. 17.—**AUS.**

1706 xiv. —— ——.]—An agent is entitled to commission on a sale brought about by his action in putting the purchaser in touch with the principal, even though the purchase is subsequently completed through another agent.—PETTYPIECE *v.* HOLDEN (1920), 40 D. L. R. 386.—**CAN.**

1706 xv. —— ——.]—The commission on a sale of real estate was given by the ct. to the agent who found the purchaser & put the vendor in motion to meet him, rather than to another who performed services in connection with the effecting & carrying out of the sale.—BATEMAN *v.* SNELGROVE & GARDEN, [1921] 1 W. W. R. 305 ; 14 Sask. L. R. 69 ; 57 D. L. R. 283.—**CAN.**

1706 xvi. —— ——.]—A. promised B. a commission if B. sold a ship. B. employed a broker as sub-agent, who mentioned the matter to another agent, & it was passed on through others until, about nine months after the agreement with B., a broker to whom the matter was mentioned came to A. & made an arrangement directly with him resulting in a purchaser being obtained. B. continued his
which were accepted by A., up to the time of sale, & was of assistance in procuring the Govt.'s consent to a transfer of the ship to a foreign registry :—*Held :* B. entitled to commission.—GREER *v.* GODSON, [1921] 2 W. W. R. 209 ; 60 S. C. R. 653 ; 56 D. L. R. 696.—**CAN.**

1706 xvii. —— ——.]—Pltf. endeavoured to effect a sale of deft.'s land to a co., of which H. was a director, & introduced H. to deft. The parties failed to agree upon terms & the negotiations ended, & pltf. made no further effort to sell the land. Subsequently deft. through another agent sold the land to H., who purchased it on behalf of another co. :—*Held :* pltf. was not entitled to commission.—NEVE *v.* LEESON, [1921] 1 W. W. R. —**CAN.**

1706 xviii. —— ——.]—After pltfs., whom a house had been listed, introduced a prospective purchaser to the vendor, the purchaser endeavoured to induce the vendor to reduce the price. The vendor was unwilling to fix a figure agreable to the purchaser, & the latter then negotiated through other agents, with whom the house had also been listed, & finally bought it :—*Held :* pltfs. were entitled to commission.—BROOK & ALLISON *v.* HENDRICKS (1922), 66 D. L. R. 825 ; 15 Sask. L. R. 439 ; [1922] 2 W. W. R.

1706 xix. —— ——.]—Deft. listed a property with pltfs. with instructions to find a purchaser at the price of $5,000. A month later deft. listed the property with another broker at $4,750, the second broker having his offices across the hall from pltfs.' offices in the same building. Pltfs. interested S. in the property & brought her to view it. Shortly after S. went to pltfs.' offices with a view to purchase & when about to enter the offices saw a picture of the property in the window across the hall marked for sale at $4,750. She went into pltfs.' offices, discussed the sale but went out without making the purchase, crossed the hall & purchased the property from the second broker at $4,750 :—*Held :* pltfs. were entitled to their commission.—TURNER MEAKIN & CO. *v.* FIELD (1923), 33 B. C. R. 56.—**CAN.**

1706 xx. —— ——.]—Pltf. received written authority from deft. to enter into a contract with a purchaser for the sale of his farm & stock. The rate of remuneration was stated to be a certain percentage on the value of the land sold. Pltf. introduced the property to a prospective buyer, who ultimately purchased the property, but through the instrumentality of another agent. Pltf. claimed from deft. £171 19s. in respect of the land sold, & £65 in respect of the stock & implements. The jury found that the sale had resulted from the introduction of the purchaser from pltf. :—*Held :* pltf.'s right to commission depended on the terms of his authority, & this did not authorise any commission on the sale of the stock.—ROWE *v.* BUTLER, [1921] N. Z. L. R. 437.—**N.Z.**

1706 xxi. ——.]—Deft. agreed to pay pltf. commission if a sale of deft.'s house to X., who was introduced by pltf., went through. Deft. also ed to let pltf. know should he be prepared to sell his house for a ller amount than he had mentioned to pltf. Deft. subsequently instructed another attorney to offer the house to X. at a reduced price, & a sale was thereupon concluded :—*Held :* pltf. was entitled to the commission agreed upon.—VAN DER WALT *v.* HORMEYR, [1920] C. P. D. 50.—**S. AF.**

1706 xxii. —— ——.]—A. agreed to give B. a commission in case of a sale of certain premises. B. introduced C., but no sale resulted. C., of his own motion & not as an agent of B., subsequently introduced D., & A. sold the premises to D. :—*Held :* B. was not entitled to commission.—GODDARD *v.* ARNOLD, [1922] T. P. D. 167.—**S. AF.**

1707 ii. ——.]—In a dispute as to which of two real-estate agents was entitled to the commission on a sale :—*Held :* the one who first through his advertisement attracted & interviewed the purchaser & directed him to the owner was the efficient cause of the sale & entitled to the commission, rather than the other who subsequently discussed the property with the purchaser & whose agent first showed it to him.—BUFFET *v.* WALLER & LAZARNICK, [1920] 2 W. W. R. 404 ; 52 D. L. R. 499 ; 30 Man. L. R. 437.—**CAN.**

1722 i. *Completion of entire contract.*]—GREER *v.* GODSON (1918), 40 D. L. R. 218.—**CAN.**

c i. —— ——.]—Pltf. found a purchaser for deft.'s land, the amount of commission was agreed on, & an agreement of sale executed. The purchaser subsequently refused to carry out the sale :—*Held :* pltf. was entitled to the commission.—DOSER *v.* LOOSE, [1920] 2 W. W. R. 388 ; 53 D. L. R. 39 ; 30 Man. L. R. 350.—**CAN.**

—— *Commission payable on of purchase-money—Payment sory notes.*]—An agreement p vided that commission was "to b due & payable when the pur money or any part thereof has been paid" :—*Held :* defts. having accepted promissory notes in lieu of a cash payment, the promissory notes must be treated as a cash payment so far as pltf. was concerned.—Cross *v.* Wood (1921), 64 D. L. R. 105 ; 50 O. L. R. 15.—**CAN.**

st. —— *Con*
already rendered.]—When it has definitely agreed to pay an agent for his services in negot- a sale, & the payment was to be made for services already rendered & was not to be dependent upon the payment of the purchase price, the agent can recover the commission under the agreement, although the purchaser has failed to make any payment after the first one.—CARMICHAEL *v.* BOWERS (1922), 67 D. L. R. 515.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—C. (a).

1729 iii. —— *Sale of remainder of land.*]—Pltf. employed deft. to sell a house & portion of the block of land on which it stood. Deft. found a purchaser & a contract of sale was signed under which pltf. gave the purchaser certain provisional rights over the unsold portion. Afterwards pltf. endeavoured to obtain from the purchaser a modification of the contract with regard to the rights over the unsold portion, & deft. did considerable work in trying to induce the purchaser to vary the contract in this respect. During the negotiations deft. repeatedly urged pltf. to sell the whole of the land. Negotiations having failed pltf. behind the back of deft. sold the remainder of the land to the original purchaser & the whole was included in a single transfer :—*Held :* deft. was not entitled to commission on the sale.—MCANDREW *v.* GRAY (1920), 20 S. R. N. S. W. 635.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—B. (c).

t. i. *S. P.* SATCHIDINANDA DUTT *v.* NRITYA NATH MITTER (1923), I. L. R. 50 Calc. 878.—**IND.**

t ii. ——.]—Where a land agent is employed to sell or exchange the property of his client, & commission

PART VIII. SECT. 3, SUB-SECT. 1.—C. (b).

aa. *Transaction similar — Further sale.*]—A. in 1911 employed pltf. to sell a Crown lease, & an agreement was entered into which provided that if pltf. sold the lease for £25,000 he was to receive £5,000. In 1914 through

1746. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1746a. Agent to sell property—Agent himself buying property—With consent of principal.]—Where an agent has been instructed to sell property on commission &, after failing to find a purchaser, agrees with his principal to buy the property himself, he is not entitled to commission on the purchase by himself unless his principal has expressly agreed that such commission shall be payable.—HOCKER *v.* WALLER (1924), 29 Com. Cas. 296.

1751. *Add. Annotation :*—*As to* (2) **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1751a. ——.]—Pltfs., who were shipbrokers, negotiated on behalf of defts., the owners of a steamship, a charterparty of the steamship which was to be in force from Oct. 1920 for five years, & which contained a clause providing that the charterers should have the option of purchasing the steamship at any time between the signing of the charter & the completion of the charter period for £125,000. On the day when the charterparty was signed defts. signed & gave to pltfs. a commission note in these terms: "We hereby agree to pay you . . . 5 per cent. brokerage on hire. . . . Should the option of purchase contained in the charter be availed of, the brokerage on purchase to be 3½ per cent. . . ." The charterparty was acted upon until June, 1921, when defts. sold the steamship to the charterers for £65,000. Pltfs. brought an action against defts., claiming (*inter alia*) 3½ per cent. commission on £65,000, the price paid by the charterers for the steamship, &, in the alternative, a *quantum meruit* for their alleged services in effecting the same:—*Held :* (1) the former of these claims failed, the option of purchase mentioned in the commission note never having been exercised, & the sale effected being a sale at a different price from that upon which alone the brokerage of 3½ per cent. was to become payable; (2) the latter claim also failed inasmuch as the parties having reduced their bargain into writing in the commission note, there was no scope for the operation of the principle of *quantum meruit*.—HOWARD-HOULDER & PARTNERS, LTD. *v.* MANX ISLES S.S. CO., [1923] 1 K. B. 110; 92 L. J. K. B. 233; 128 L. T. 347; 38 T. L. R. 757 66 Sol. Jo. 682; 16 Asp. M. L. C. 95; 28 Com. Cas. 15.

the instrumentality of pltf. the lease was transferred to S. &, on payment by S. of £5,000, pltf. received £1,000 as commission. In 1919 A. & S. sold the lease to T. for £14,000. Some years prior to this sale pltf. had submitted full particulars of the lease to T., who would not then buy. L., who was employed for that purpose by A. & S., had brought about the sale to T. Pltf. claimed commission in respect of the sale to T.: *Held :* pltf. was not entitled to commission.—DEWDNEY *v.* MATHESON, [1923] S. A. S. R. 105.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—D.

1746 i. *Agent to procure loan—For to new company.*]—*Held :* as the co. was incorporated with the express purpose of carrying out the old co.'s projects, it could not contend that it had not received the benefit of the loan, & it was liable.—THOMAS *v.* GALE, [1923] 3 D. L. R. 757. **CAN.**

sb. *Agent to sell—Third party entering into partnership with principal.*]—A., an agent employed by P. to obtain a purchaser for a mill, introduced M. to P. The sale did not go through. P. eventually entered into a contract of partnership to work the mill, the partners being P., M. & C.:—*Held :* as the transaction resulting from the agency differed substantially from that which A. had been employed to procure, he was not entitled to any remuneration.—BORDER *v.* EDLEY, [1920] O. P. D. 19.—**S. AF.**

pi. ——.]—Pltfs. claimed for commission on sale of timber holdings of deft. co. The shareholders had passed a resolution authorising a sale at a fixed minimum price upon terms agreeable to the directors, & a letter from the co.'s managing director to pltfs. offered $35,000 commission should pltfs. make a sale at a certain named price, which price would net the co. such minimum price. A sale was made through other agents, not for a lump sum, but for a price based on board measurement to be paid for as the timber was taken, with an additional sum to be paid when the timber was not a sale within the contract.—RORAY *v.* NIMPKISH LAKE LOGGING CO., LTD., & GARLAND, [1919] 2 W. W. R.

yi. ——.]—E. requested S., a servant of pltf., to obtain a buyer for his property. E. told S. that he wanted £850, & would pay commission. S. then asked E. if he would consider an offer. E. replied he wanted £800 clear. S. introduced K. to E., but the price offered was too low, & after various negotiations no sale took place. Six months later E. sold the property to K. for £600:—*Held :* as the buyer offered less than £800, pltf. was not entitled to commission.—ROBINSON *v.* EVES, [1917] S. A. L. R. 71.—**AUS.**

yii. ——.]—*Held :* as the employment was a general one, the price mentioned being intended not as a hard & fast one, but as a basis of negotiations, pltf. was entitled to the agreed commission on the price obtained.—PRENTICE *v.* MERRICK, [1917] W. W. R. 1060; 24 B. C. R. 388; D. L. R. 388.—**CAN.**

yiii. ——.]—An owner in Apr. listed with an agent certain land for sale at $35 an acre with a fixed cash payment, the price to include the crop. In Nov., after the owner had taken off & sold the crop, the agent sold the land for $30 an acre on a small cash payment:—*Held :* in order to earn his commission the agent had to obtain a purchaser for the land & crop at $35 per acre.—FITCHELL *v.* LAWTON, [1919] 3 W. W. R. 728; 49 D. L. R. 185.—**CAN.**

yiv. ——.]—Deft. listed his farm with pltfs. for sale at $38 an acre. Deft. sold the land at $37 an acre to one introduced by pltfs. *Held :* pltfs. were entitled to commission.—SMITH *v.* WRIGHT, [1919] 3 W. W. R. 1091; 49 D. L. R. 408; L. R. 491.—**CAN.**

v. ——.]—When a proprietor to an agent & requests him to find a purchaser, naming at the same time the sum which he is willing to accept, that will constitute a general employment, & should the estate be eventually sold to a purchaser introduced by the agent, the latter will be entitled to his commission, although the price paid should be less than the sum named at the time the employment was given. The mention of a specific sum prevents the agent from selling at a lower price without the consent of his employer, but it is given merely as the basis of future negotiations, leaving the actual price to be settled in the course of those negotiations.—PALMER *v.* HARVEY (1922), 65 D. L. R. 769; 15 Sask. L. R. 152; 1 W. W. R. 231; *affg.* (1920), 55 D. L. R. 703; 14 Sask. L. R. 19.—**CAN.**

sc. —— *Third party taking land in a trade.*]—Agents who had been promised a commission should they obtain a purchaser for land at a certain price:—*Held :* not entitled to commission, as they only introduced a party who took the land in a trade & with whom the principal had previously discussed a trade.—BROWN *v.* PATCHELL, [1919] 3 W. W. R. 701; 49 D. L. R. 158.—**CAN.**

sd. *Agent to exchange—Exchange of properties.*]—A real estate is entitled to his commission on an exchange of properties where he brings the parties together & actively in negotiating the exchange, which eventually falls through owing to the objection of his principal to include certain stock & implements in the transaction, the principal soon afterwards completing the exchange without the stock & implements but with the same purchaser for other property owned by him.—DUNN *v.* SINCLAIR, [1923] 1 D. L. R. 426.—**CAN.**

sf. *Agent to obtain signature of wife—Obtaining signature of husband.*]—Defts. agreed with pltfs. that if the latter obtained Mrs. M. to sign a building contract for a house they would pay pltfs. the usual commission as on a sale of land. Pltfs. obtained the signature of the husband:—*Held :* as it was immaterial to defts. whether the contract was signed by Mrs. M. or by the husband, pltfs. were entitled to the commission agreed to.—SMITH & SMITH *v.* DINGLE & HOLMES, [1923] 3 D. L. R. 68; 3 W. W. R. 49.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (a).

1754 xix. —— *altering for giving*—An agent with whom land has been listed for sale has earned his commission when he has introduced to the owner a purchaser who is ready, willing & able to buy at the price & terms stated by the owner, though the sale does not go through by reason of the owner on a date for giving of possession later than that at first

1755. *Add. Annotation :*—**Refd.** Howard Houlder *v.* **Manx Isles S.S. Co., [1923] 1 K. B. 110.**

1763. *Add. Annotation :*—**Refd.** Howard Houlder *v.* **Manx Isles S.S. Co., [1923] 1 K. B. 110.**

1768b. Principal selling ship to charterers—During currency of charter.]—Shipbrokers employed to effect a charter of a steamship procured a charter for eighteen months, but after four months of the charter had run the owner sold the vessel to the charterers & the charterparty was cancelled. The charterparty provided for payment of a commission of 2½ per cent. on the hire paid & earned under the charterparty & on any continuation thereof. In an action by the brokers to recover commission for the remainder of the charter period :—*Held :* it was not an implied term of the contract that the shipowners should not agree to put an end to the charterparty by the sale of the ship to the charterers, & the action failed.—FRENCH (L.) & Co. *v.* LEESTON SHIPPING Co., [1922] A. C. 451 ; 91 L. J. K. B. 655 ; 127 L. T. 160 ; 38 T. L. R. 459 ; 15 Asp. M. L. C. 544 ; 27 Com. Cas. 257, H. L.

Annotation :—**Folld.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1771. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1775. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1776a. — — **"Private treaty" sale.**]—Where an estate agent is employed to find a purchaser of an estate, the terms of the agent's employ-

v. MITCHELL, [1921] 1 W. W. R. 252 ; 57 D. L. R. 288 ; 31 Man. L. R. 60.—**CAN.**

1754 xx. ——.]—Deft. :—*Held :* liable to pltf. for an agreed commission for a sale of land procured by pltf. & which was not carried out because of deft.'s refusal, without sufficient reason, to carry it out.—BALLS *v.* MCGREGOR (1922), 68 D. L. R. 718 ; 32 Man. L. R. 196 ; [1922] 2 W. W. R. 1247 ; *affa.*, 66 D. L. R. 696.—**CAN.**

1754 xxi. ——.]—Where a real-estate agent had found a purchaser who had accepted the seller's proposition for the sale or exchange of his land, & the acceptance was made within the time limited by the seller, but the seller refused to complete the transaction & alleged that the purchaser was not ready, willing or able to complete the transaction :—*Held :* the *onus of proof* was on the *agent* suing for commission.—REGINA BROKERAGE & INVESTMENT CO. *v.* KISTNER (1922), 70 D. L. R. 75 ; [1922] 3 W. W. R. 657.—**CAN.**

sk. *Principal refusing to compete with other buyers.*]—Pltfs. engaged deft. to purchase lambs in a large specified area. He was to receive a commission on all lambs bought by him, the price to be the highest market price at the time of delivery. Deft. proceeded to canvass farmers & secure options on the lambs they had for sale. When the time for taking the delivery was at hand pltfs. advanced deft. $2,000 to buy lambs. When the time for taking delivery of the lambs arrived, pltfs. refused to advance the price to the level of that of competing buyers & deft. was unable to procure the lambs which he had agreed for :—*Held :* pltfs. had defaulted & were estopped from saying that deft. did not complete his contract.—NEW ENGLAND DRESSED MEAT & WOOL CO. *v.* PATRICK BROTHERS, [1923] 1 D. L. R. 153.—**CAN.**

1763 i. *Principal declining to accept loan.*]—Where an agent performed his part in obtaining a loan, & was in no way responsible for the non-payment of the money under the loan :—*Held :* he was entitled to his commission.—WHITESIDE *v.* WALLACE LTD. (1919), 27 B. C. R. 40 ; 45 O. L. R. 434.—**CAN.**

1766 v. ——.]—SMITH *v.* UPPER CANADA COLLEGE (1920), 48 O. L. R. 120 ; 54 D. L. R. 545 ; 18 O. W. N. 370.—**CAN.**

1766 vi. ——.]—Pltf., a ship general broker, sold to N. a ship on deft.'s behalf. The purchase price was £140,000 payable by N. to deft. in instalments, & deft. agreed to pay pltf. £20,000 of the purchase price when he received the second instalment. Before that instalment was paid N., with deft.'s consent, cancelled the contract :—*Held :* upon the tion of the contract of sale, pltf.'s under his special contract with deft. was determined & his claim for commission failed.—GOWAN *v.* BOWERN, [1924] App. D. 550.—**S. AF.**

si. *Principal not negotiating in good faith.*]—Where under an agreement to pay an agent commission on a sale of real estate, the agent is to be entitled to the commission only when the principal concludes a sale to a purchaser found by the agent, the law implies an agreement by the principal to negotiate in good faith with the purchaser proposed & to demand only such terms as, considering all the circumstances, might be conceivably demanded in perfect good faith. Where the principal does not negotiate in good faith & the sale is thereby prevented, the agent is entitled to damages.—MCINTYRE & Co. *v.* LAW, [1918] 2 W. W. R. 359 ; 13 Alta. L. R. 273 ; 40 D. L. R. 231.—**CAN.**

sm. *Principal selling ship to charterers—Commission payable under charter.*] Pltfs. negotiated a charterparty, which contained a clause providing for payment of commission on the estimated gross amount of hire as earned & paid. Subsequently the owners & the charterers entered into a contract of sale, which contained a clause cancelling the charter & so cancelling the clause therein providing for the commission :—*Held :* pltfs. were entitled to the amount of commission which would have been payable if the charterparty had not been cancelled, but, especially having regard to the fact that the action was brought before the period of hiring under the charterparty had expired, subject to a fair deduction in view of the risk of the hire ceasing apart from any voluntary action by the owners.—ROXBURGH *v.* CROSBY & Co., [1918] V. L. R. 118.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (b).

e i. ——.]—Deft., who was authorised to procure a purchaser & accept a deposit & retain from the deposit his commission for procuring a purchaser then ready & willing & apparently able to fulfil his obligations to the extent at least of making the down payment, procured a purchaser, who made the agent a deposit of $250, & the vendor entered into a written memorandum to sell to him. The principals afterwards by arrangements between themselves cancelled the contract on the ground that the purchaser found himself unable to make the first payment, & the purchaser agreed to forfeit the $250 :—*Held :* deft. was entitled to retain the $250, but was not entitled to anything further.—DE WOLF *v.* DELMAGE (1922), 65 D. L. R. 42 ; 17 Alta. L. R. 441 ; [1922] 1 W. W. R. 1129.—**CAN.**

e ii. ——.]—A broker,

ment & such new arrangement was subsequently rescinded by the principal :—*Held :* the broker was not entitled to commission.—FOWLER & Co. *v.* MUDALIAR (1923), I. L. R. 2 Ran. 45.—**IND.**

fi. ——.] W., having agreed to sell shares to a co., entered into a contract to pay C. a commission for services in effecting the sale. The purchase price of the shares was to be paid by instalments & the commission was to be paid out of the respective instalments. The contract provided that if the payments were not made by the purchasers W. would be under no liability to pay the commission. The initial payment was made & the commission thereon paid to C. When the next payment fell due the purchasers defaulted & shortly after the co. was placed in liquidation. The liquidator offered the assets for sale & accepted the tender of W. & H. The successful tenderers received all the assets of the estate including the stock sold by C. There was no evidence that the assets had a cash value equivalent to the amount of the unpaid purchase price of the *Held :* W. had not received payment for the shares, & the commission was not earned.—CECIL *v.* WHITTAKER, [1923] S. C. R. 69 ; 1 D. L. R. 352 ; *affg.* 20 O. W. N. 260.—**CAN.**

sn. *Third party repudiating contract.*—Where a contract for sale was entered into between A. & B., & A. accepted B. as the purchaser, but B. did not pay any portion of the purchase-money, & subsequently repudiated the contract :—*Held :* the *agent* who negotiated the contract was entitled to commission on the sale.—BOND *v.*

sp. ——.]—Where a purchaser repudiated the agreement of sale, the vendor acquiescing :—*Held :* pltfs. as agents were not entitled to commission.—MOTOR FARMING & DEVELOPMENT CO. & DAVIDSON *v.* SMITH, [1923] 2 D. L. R. 1178 ; 1 W. W. R. 1109.—**CAN.**

st. ——.]—Pltf. employed deft. to find a purchaser for certain land, & agreed to pay him commission if he succeeded. Deft. found persons willing to an option, & he prepared an option ment which was entered into by the parties. The purchase price was $3,000, & the cash payment was $300 which was to be forfeited if the purchasers failed to go further in the purchase. They paid this $300 to deft., who paid pltf. $150, retaining the balance, $150, as his commission on the whole purchase price. The sers refused to carry out the

ment being that commission is payable to him on the purchase price on sales by "private treaty," his principals are liable for his remuneration only when a sale has been completed & the purchase price has been paid on completion, except where the non-completion is due to some default or omission on the part of his principals. When, therefore, the agent has been employed simply on the above terms, he is not entitled to commission on the purchase price if he has merely brought about a purchase agreement which, without default or omission on the part of his principals, has not been completed.—KNIGHT, FRANK & RUTLEY *v.* GORDON (1923), 39 T. L. R. 399.

1782. *Add. Annotation :—Generally,* **Mentd.** Hughes *v.* Satchell (1925), 134 L. T. 93.

1783. *Add. Annotation :—* **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1785. *Add. Annotation :—* **Apprvd. & Apld.** French *v.* Leeston Shipping Co., [1922] 1 A. C. 451.

1786. *Add. Citation :—* 23 Com. Cas. 121.

Add. Annotation :— **Consd.** Affréteurs Réunis Soc. Anon. *v.* Leopold Walford (London), [1919] A. C. 801.

1786a. —— **No hire earned—Special clause in charterparty.**]—A clause in a time charterparty provided that "a commission of 3 per cent. on the estimated gross amount of hire is due to L. on signing this charter ship lost or not lost." No hire was in fact earned under the charterparty :—*Held :* (1) the charterers, as trustees for the brokers, could enforce the clause against the shipowners ; (2) a custom by which commission was payable only if hire was earned under the charterparty could not be set up by the shipowners as an answer to the brokers' claim, inasmuch as it was inconsistent with the terms of the clause.—AFFRÉTEURS RÉUNIS SOCIÉTÉ ANONYME *v.* LEOPOLD WALFORD (LONDON), LTD., [1919] A. C. 801 ; 88 L. J. K. B. 861 ; 121 L. T. 393 ; 35 T. L. R. 542 ; 14 Asp. M. L. C. 451 ; 24 Com. Cas. 268, H. L. ; *affg.* S. C. *sub nom.* LEOPOLD WALFORD (LONDON) *v.* AFFRÉTEURS RÉUNIS SOCIÉTÉ ANONYME, [1918] 2 K. B. 498, C. A.

Annotation :—As to (1) **Consd.** French *v.* Leeston Shipping Co. (1921), 37 T. L. R. 453.

1790. *Add. Annotation :—* **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1791a. ——.]—HOWARD HOULDER & PARTNERS, LTD. *v.* MANX ISLES S.S. Co., No. 1751a, *ante.*

1793. *Add. Annotation :—* **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

purchase : —*Held :* pltf. was entitled to the $150 retained by deft. as commission.—CARLSON *v.* THOMPSON, [1923] 3 W. W. R. 869.—**CAN.**

sa. ——.]—Pltf. entered into the following sale agreement with deft. :—"I hereby authorise you to negotiate a sale, & agree to pay you commission provided you sell or furnish me either directly or indirectly with the name of a party to whom I may sell. Commission to be due & payable when sale is made." Deft. found a purchaser, entered into an agreement of sale with him, & a deposit of $200 was paid by the purchaser to deft. The purchaser subsequently refused to complete the purchase, & the sale was never completed :—*Held :* the sale never having been completed, deft. was not entitled to any com- —LEAMAN *v.* LAWTON (1[illegible] 51 N. B. R. 110.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (c).

sb. *Agent himself paying deposit—To prevent sale of land until definite purchaser secured.*]—Where an agent for sale of land paid his principal $200, the principal to believe it was as a deposit on behalf of P., whereas it was really paid to hold the land until a definite purchaser could be :—*Held :* the agent was not to any commission.—CRERER : PATTERSON *v.* W. W. R. 422.—**CAN.**

1780 ix. —— *Agreement to pay commission on work done.*]—Pltf., who was ed by deft. to sell a station y & to find a lease for another, found A., who was ready & willing to purchase the one & to lease the other, & with him deft. entered into a contract. Subsequently the contract having fallen through, pltf. was employed by deft. to raise money for him which it was hoped would enable the purchase & lease by A. to be carried through, & a written agreement was entered into between pltf. & deft., by which it was provided that in the event of the completion of the sale & lease deft. should pay pltf. a certain sum "[illegible] due to pltf. on [illegible]." The sale & l[illegible] never completed. In an action to recover the sum mentioned in the agreement, the trial judge found that when the agreement was entered into pltf. had a right to recover a reasonable sum for commission in respect of the work he had then done, & that the contract did not deprive him of that right :—*Held :* pltf. was entitled to recover a sum made up of 1 per cent. of the purchase-money & 5 per cent. of a year's rent.—FRY *v.* [illegible] 23 C. L. R. 589.—**AUS.**

1784 iv. ——.]—Deft. placed a property in the hands of pltf., a commission agent, for sale upon prescribed conditions. Pltf. found A., who was ready & willing to purchase upon all the prescribed conditions except two, to which at all material times he expressed his unwillingness to agree. Deft. thinking that A. had agreed to all the prescribed conditions, submitted to A.'s solr. a contract of sale containing all the prescribed conditions. A. refused to sign the contract unless the two prescribed conditions were struck out :—*Held :* pltf. was not entitled to any commission or other remuneration from deft.—TYNAN *v.* A'BECKETT, [1923] V. L. R. 412.—**AUS.**

1784 v. ——.]—In the absence of an exclusive listing, or of a special arrangement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to anything if he does not find the purchaser.—GREENWOOD & GREENWOOD *v.* WELFORD (1922), 70 D. C. R. 107 ; [1922] 3 W. W. R. 388.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (d).

1787 ii. ——.]—A claim upon a *quantum meruit* for services as agent in respect of certain properties, disallowed on the ground that it was not the understanding of the parties that payment should be made except as commission on a sale being effected ; in suing upon a *quantum meruit*, in order to rely upon the acceptance by deft. of something pltf. has done he must have done it in circumstances which led deft. to know that if he accepted what had been done it was on the terms he must pay for it.—WREDEN *v.* TURNER (1922), 68 D. L. R. 748 ; [1922] 3 W. W. R. 623.—**CAN.**

1789 i. *No right where express contract.*]—Where a contract of agency the circumstances in which the agent will be entitled to a commission, compensation by way of *quantum meruit* will not be allowed in circumstances where no commission can be claimed ; so to allow it would be to declare a contract existing between the parties different from the one they have made themselves.—LAW & MACLEAN *v.* SAWYER MASSEY CO., [1918] 1 W. W. R. 727 ; 13 Alta. L. R. 126 ; 38 D. L. R. 333.—**CAN.**

1789 ii. —— *Claim based on usage.*]—Where an agent's claim was based on a usage:—*Held :* a special contract arose between the parties, & a *quantum meruit* was excluded.—SAMSON *v.* MCKAY, [1923] N. Z. L. R. 4.0—**N.Z.**

1789 iii. —— .]—ELLIOTT *v.* WARBURTON, [1925] 4 D. L. R. 1070.—**CAN.**

1793 ii. ——.]—Deft. employed pltf. as agent to sell land & equipment of cattle, horses, implements, etc., & furniture, at a price on a basis of $80 an acre with a certain cash payment. Pltf. found a purchaser who wanted the land alone, but could not make a cash payment. Deft. & the purchaser came to an agreement for sale on crop payments at $60 an acre, & signed an agreement prepared by pltf., which was crude & improvident but one from which the rights of the parties could be defined. Subsequently a more elaborate agreement was drawn by deft.'s solr., which because of certain onerous additions therein for the protection of deft. the purchaser refused to sign, & the transaction was broken off :—*Held :* there was in effect a sale of which pltf. was the *causa causans*, & he was entitled to payment for his services, on a *quantum meruit* basis.—BANNERMANN *v.* BRADLEY, [1919] 3 W. W. R. 952.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—F.

w i. ——.]—Where an agreement as to commission is that the agent is to receive all over & above a certain figure, but nothing is said as to when the commission is to be paid, the agent is not entitled to his commission until the vendor has received in full the amount stipulated, & a promise made by the principal after the sale to pay the commission at once does not render him liable to make immediate payment.—CLAVELLE *v.* [1915] 1 W. W. R. 900 ;

1820. *Add. Annotation :*—**Consd.** Cramb *v.* Goodwin (1919), 35 T. L. R. 314.

1829. *Add. Annotation :—As to* (2) **Folld.** Cramb *v.* Goodwin (1919), 35 T. L. R. 314.

1829a. —— ——.]—Deft. engaged pltf. as a commercial traveller on a salary & commission on all business obtained by pltf., including repeat orders from all firms in the ground allotted to pltf., it being stipulated that pltf. was to have the commission on all accounts that he opened, including all repeat orders, whether they were actually handed to pltf. or posted direct to deft. :—*Held :* the intention of the parties was that commission should be paid only on orders obtained during the engagement, & pltf. was not entitled to commission on repeat orders received after the termination of his engagements.—CRAMB *v.* GOODWIN (1919), 35 T. L. R. 477 ; 63 Sol. Jo. 496, C. A.

1832. *Add. Annotation :*—**Folld.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

1833. *Add. Citations :—Affd.*, [1918] A. C. 239 ; 87 L. J. K. B. 416 ; 118 L. T. 126 ; 34 T. L. R. 206 ; 62 Sol. Jo. 290, H. L.

Add. Annotations :—**Refd.** Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260 ; Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331 ; Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304 ; Rodriguez *v.* Speyer, [1919] A. C. 59. **Mentd.** *Re* Munster, [1920] 1 Ch. 268 ; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107 ; *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

1834. *Add. Annotation :*— **Distd.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

1835. *Add. Annotations :*—**Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138. **Mentd.** Cornelius *v.* Phillips, [1918] A. C. 199 ; Kensington & Knightsbridge Electric Lighting Co. *v.* Notting Hill Electric Lighting Co. (1918), 87 L. J. K. B. 565 ; *Re* Mahmond & Ispahani, [1921] 2 K. B. 716.

40 D. L. R. 61 ; 11 Sask. L. R. 111.—CAN.

sc. *Commission payable out of purchase-money — Total purchase-money paid into bank—Disclaimer by seller of interest in sum agreed to be paid to agent.*]—An agent for the sale of goods was authorised to ask a price which would ... him a certain amount for his own benefit. The buyer paid the total price into a bank to be paid over to the seller, & the latter disclaimed any interest in the amount which he had agreed to let the have. The buyer then claimed that amount as his :—*Held :* the money belonged to the agent.—DEVALL *v.* [1918] 3 W. W. R. 221 ; 42 D. L. R. 573.—**CAN.**

sd. —— *No purchase-money paid.*]—Where a principal incurred no contractual obligation to pay commission except out of the purchase-money as received, & no part of the purchase-money had been received :—*Held :* the principal was not liable.—THORNDYKE-TRENHOLME REALTY CO. *v.* LYALL SHIPBUILDING CO., [1921] 3 W. W. R. 333 ; 59 D. L. R. 490.—**CAN.**

sf. *Commission payable out of profit on resale—Resale at large nominal profit—No part of purchase-money paid.*]—B. & C. through pltf. purchased certain land, agreeing to pay pltf. a commission of $1 per acre, which was to be paid, however, only out of a profit on a resale. B. & C. assumed to make a sale at a purchase price showing a large nominal profit, which purchase price was to be paid by crop payments. The purchasers had three crop failures, paid nothing on account of principal, interest or taxes, & finally abandoned the agreement of & went out of possession of the land :—*Held :* the sale was a resale at a profit within the contemplation of the parties, & pltf. was entitled to commission.—HANTON *v.* ROYAL TRUST CO. [1923] 3 D. L. R. 2 W. W. R. 1046.—**CAN.**

sk. *Commission payable out of specified instalment—Instalment not paid.*]—Where it was an express stipulation of a contract as to commission that the balance of commission due was to be paid out of a specified instalment of the purchase price payable on a specified date :—*Held :* the instalment not having been paid by the purchaser, who had abandoned the land, no commission was payable.—BILODEAU *v.* MCLEAN, [1924] 3 D. L. R. 410 ; 2 W. W. R. 631 ; 34 Man. L. R. **CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—G.

1808 ix. —— *Option to purchase.*]—A. held an option for the sale of land, his remuneration to be the excess of the price obtained over $20,000. After the option had lapsed he introduced to the owner a purchaser of the land at $35,000 :—*Held :* A. was not entitled to the excess over $20,000, but could only recover *quantum meruit*.—ACKLES *v.* BEATTY (1919), 59 S. C. R. 640 ; 52 D. L. R. 691.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—K.

1i. —— ——.]—An agent has no right to remuneration unless he succeeds in obtaining a tenant or purchaser, as the case may be, on the appointed terms, for the property put in his hands for the purpose of being sold or let. The contract is revocable at the will of the principal at any time before the agent has actually procured a person ready to take or to purchase on the terms arranged.—SMITH (JUDGE) *v.* RENFREY, [1920] 22 W. A. L. R. 61.—**AUS.**

1ii. —— ——.]—Where a real estate agent receives an exclusive listing of land it may be revoked by the sale of the property by the owner, in which case the real estate agent will only be entitled to recover on a *quantum meruit*.—GREENWOOD & GREENWOOD *v.* WELFORD (1922), 70 D. L. R. 107 ; [1922] 3 W. W. R. 388.—**CAN.**

nj. ——.]—Pltf., by writing signed by deft. on Sept. 16, 1919, was authorised "from this date until withdrawn by me in writing," to offer for sale land for $7,500, & deft. thereby agreed to pay pltf. a commission "on this or the selling price, should you effect a sale." Later on the same day, deft. himself sold the property to M. for $7,000. On Sept. 18, pltf. obtained a written offer under seal from B. to buy the property for $7,500 cash, & the offer was accompanied by a cheque for $1,000 ; the offer & cheque reached deft. on Sept. 19. No notice in writing of the sale to M. was given to pltf. until Sept. 20, when deft. wrote advising pltf. of that sale & returning the B. offer & cheque :—*Held :* pltf. was entitled to recover the payment for his services.—v. YOUNG (1921), 64 D. L. R. 49 O. L. R. 162.—**CAN.**

sp. *Appointed by ... it as agent.*]—... co. which expected to be appointed ... for the Govt. of Western Australia, agreed to employ W. as sub-agent. The co. failed to secure the appointment & terminated W.'s employment :—*Held :* the co. warranted that th would be appointed ... they were liable to W.—OCKERBY & CO., LTD. *v.* WATSON (1918), 25 C. L. R. 431.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—L. (a).

1818 i. *Insurance agent—Commission on premiums paid after termination of agency.*]—In the absence of a definite agreement to that effect, an agent of an insurance co., who has secured policy-holders for the co. & whose duties as agent do not cease with the first introduction of the customer, has no right to commission on subsequent premiums paid in by such policy-holders, after he ceased to be agent.—EMPIRE OF INDIA LIFE ASSURANCE CO. BOMBAY *v.* NAND AYYAR (1920), I. L. R. 44 Mad. 170.—**IND.**

ul. —— *Commission on sales made before termination of agency - Deliveries & payments made after termination.*]—Under an agreement pltf. was appointed defts.' sole & exclusive salesman for the sale of coal, at a commission "on the gross amount of all sales made by" defts. "under this agreement" :—*Held :* pltf. was entitled to commission upon sales contracted before termination of the agreement, but in respect of which deliveries of coal were made & paid for after it.—WILSON *v.* ATLAS COAL CO., LTD., [1923] 2 W. W. R. 890.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (a).

st. *Land agent—Land Agents Act*, 1912.]—A person who, not being licensed as a land agent, obtains an appointment from a vendor to act as such ... of an offence under s. 14 of the above Act, & cannot maintain an action against his ... pal for commission ; & the defect [ ] not cured either by the expiry of the period of limitation or by the fact that the agent has obtained a licence before performing the services in respect of which the commission is claimed.—NELSON *v.* N. Z. L. R. 369.—**N.Z.**

... Agents Act, 13 (*a*), ought to be construed meaning that the land agent must ... a licence at the time the work is done, & the fact that after the work is done the land agent fails to take out a further licence does not destroy a right to bring an action for commission, where the cause of action ... at the time the agent was in p... of a licence.—JOHNSTONE *v.* G... [1920] N. Z. L. R. 853.—**N.Z.**

... *Agents ting Act.*]—Pltf., a store-keeper, brought about the sale of deft.'s land to another

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1848a. ——.]—Pltf. was employed by deft., a music seller, to find a purchaser of the lease of deft.'s business premises, which were held under a covenant against carrying on any other business. Several tailors expressed to deft. their willingness to buy the lease for £2,500, but deft., believing that the landlords would not consent to the carrying on of a tailoring business, did not approach the landlords. Pltf., however, having found a tailoring co. who wanted to purchase the lease, received an assurance from the landlords that they would consent to a tailoring business, & he, by concealing this fact from deft., induced him to agree to sell the lease to the tailoring co. for £2,250 in ignorance of the fact that the proposed purchasers carried on a tailoring business. In an action for commission for finding a purchaser:—*Held:* as pltf. had taken advantage of the false position to persuade deft. to agree to take a lower price than deft. could have got elsewhere, the action failed.—HEATH *v.* PARKINSON (1926), 42 T. L. R. 693; 70 Sol. Jo. 798.

1849. *Add. Annotation:*—**Mentd.** *Re* Morris, Mayhew *v.* Halton, [1921] 1 Ch. 172.

1852. *Add. Annotation:*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19.

1852a. ——.]—Pltfs., a firm of mining engineers, were employed by defts. to negotiate the purchase of mining properties. Defts. were willing to give £9,000 for the properties, & agreed with pltfs. that if they made a bargain for less than £9,000, the difference between the £9,000 & the lesser sum could be taken by pltfs. as remuneration. Before the purchase was effected, pltfs. had arranged with the vendors to take commission from them on the sale:—*Held:* pltfs. had committed a breach of duty as agents for defts. & were not entitled to any remuneration from defts. —RHODES *v.* MACALISTER (1923), 29 Com. Cas. 19, C. A.

In an action for
Held: s. 21 of the above Act did not apply to individual transactions.—GOODALL *v.* COUSINS, [1923] 3 D. L. R. 718; 32 B. C. R. 410.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (b).

sb. *Member of Parliament effecting sale—Sale to Government.*]—Pltfs., land agents, were employed by deft. to bring about a sale of deft.'s property to the Govt. of Victoria. Services were to be rendered by D., a member of the Parliament of Victoria, who was employed by pltfs. as their
vo on the terms that he receive a share of their commission on the sale. D.'s services were an effective cause of the sale. In an action by pltfs. against deft. to recover commission on the sale:—*Held:* the transaction was contrary to public policy, & pltfs.' action failed.—HORNE *v.* BARBER (1920), 27 C. L. R. 493.—**AUS.**

sc. - - - *Consent of Government necessary.*] A member of the Dominion Parliament brought about a sale, it being his duty under agreement with the vendor to use his influence with the minister in charge to secure the Govt.'s consent which was necessary to complete the sale:—*Held:* he was not entitled to a commission for his services, the agreement being void on the ground of public policy.—CLEMENTS *v.* COUGHLAN (1921), 21 B. C. R. 401.—**CAN.**

sd. *Sale under Discharged So
nd Act*, 1919 (No. 3039)—
of advisory committee agent of
—A land agent, who was also a member of an advisory committee, constituted under s. 35 of the above Act, to the Lands Purchase & Management Board, entered into a contract with the owner for effecting the sale to the board of certain land, as to which the committee had certain powers & duties to advise the board. The contract did not refer to the use by the agent of any influence as a member of the committee in effectuating the sale; the agent took no part in the discussion by the committee of the report of a sub-committee as to the expediency of the purchase by the board of such land, & acted throughout *bona fide* & without concealment of the fact of his agency, & he was not at any time a member of any valuation sub-committee:—*Held:* the contract was void as being against public policy, & the agent's claim for com-
failed.—WOOD *v.* LITTLE, V. L. R. 11.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (c).

se. *Agent returning deposit to pur-*
r.]—Resps. were employed as
s to sell property belonging to applt. They found a purchaser but applt. failed to complete the sale on the day fixed, & resps., on the application of purchaser, paid him back the deposit without communicating with applt.:—*Held:* resps. had been guilty of a wilful breach of the duty which, under Land Agents Act, 1912, s. 8, they owed to applt., & such breach deprived them of their right to recover any commission at all.—BUCHANAN *v.* NEALE, [1920] N. Z. L. R. 889.—**N.Z.**

sf. *Failure to make binding contract.*]—Where pltfs., acting as brokers, failed to make a contract binding on both parties:—*Held:* they were not entitled to commission.—PATERSON *v.* MCCALLUM, [1921] N. Z. L. R. 869.—**N.Z.**

1841 iva. - - - ——.]—MACK *v.* MCLEOD, [1925] 2 D. L. R. 1201.—**CAN.**

1841 vi. —— *Secret agreement to pool commissions.*]—On a proposed exchange of properties, if the agents, unknown to either of the principals, agree to pool their respective commissions & to divide equally, so that under such pooling agreement one agent receives more than the commission payable by his principal, that agent cannot recover any commission from his principal, as such an agreement gave him an interest adverse to the interest of his principal.—DALY *v.* KELLIHER, [1921] 2 W. W. R. 192.—**CAN.**

1841 vii. - - - - *Agent acting for both*
- -Where the owner of property listed with a real estate agent for sale exchanged the property with the assistance of the agent for other property listed, to the knowledge of the owner, with the agent for exchange, but had not agreed to pay him a commission on the exchange & had not been informed by him that he still intended to act as her agent & to charge her a commission:—*Held:* (1) she was not liable for commission; (2) a rule of a Real Estate Exchange to which the agent belonged, that an agent who acted for both parties in an exchange could collect from each one-half the usual commission on a sale, did not legally entitle the agent to recover such half from her.—HACKNEY *v.* LYNE, [1925] 4 D. L. R. 861; [1925] 3 W. W. R. 614.—**CAN.**

1850 vii. —— *Agent to sell acting for other principals—Breach of contract.*]—A contract, entered into in Feb. 1914, between a firm & a commission agent, whereby the latter was appointed agent for the sale of certain cotton goods dealt in by the firm, contained a clause prohibiting the agent from selling such goods supplied by others than his principals. From July 10, 1916, onwards the agent regularly sold goods of that class on behalf of another firm, & he also bought & sold such goods on his own account:—*Held:* the agent was not entitled to an accounting for the period subsequent to July 10, 1916, as he was then in material breach of his contract, but he was entitled to an accounting for the period prior to that date during which he had duly obtempered the contract.—GRAHAM & CO. *v.* UNITED TURKEY RED., ETC. CO., LTD., [1922] S. C. 533; 59 Sc. L. R. 420.—**SCOT.**

1852 vii. ——.]—Where an agent acts improperly & unfaithfully in the performance of his duties towards his principal, he forfeits any remuneration or commission to which he would otherwise have been entitled if his improper or unfaithful conduct is connected with the duty he had to perform. The mere fact of an agent receiving & retaining a secret profit or commission arising out of & in connection with the performance of his duty constitutes unfaithfulness & dishonesty, & disentitles him to any remuneration or commission.—LEVIN *v.* LEVY, [1917] T. P. D. 702.—**S. AF.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (d).

sk. *Agent selling at less than listed*
]—An agent for the sale of goods not entitled to a commission for introducing a purchaser where the goods are sold at a reduction from the listed price greater than the commission, & the agency contract provides that if any goods are sold for less than the current price list by the agent, the acceptance of such sale shall not entitle the agent to the commissions set forth, but such reduction in price shall be deducted from the agent's commission.—LAW & MACLEAN *v.* SAWYER MASSEY CO., [1918] 1 W. W. R. 727; 13 Alta. L. R. 126; 38 D. L. R. 333.—**CAN.**

sl. *No commission on land not sold.*]
—Deft.'s land having been listed with pltf., an estate agent, the latter claimed commission on the proceeds of a subsequent sale, but failed to show that he brought about a sale of deft.'s land, or that deft. made a sale thereof to a person introduced to him by pltf.:—*Held:* pltf. had not shown the performance of any services which entitled him to commission.—

1862. *Add. Annotation :*—**Apld.** Adams *v.* Morgan, [1923] 2 K. B. 234.

1872a. Promise to indemnify vendor of business to company—Vendor retained as agent for limited period—Assessment of vendor to super-tax on profits made within period.]—Pltf., who was the owner of a stationery business, sold it in Aug. 1919, to defts., a limited co. One of the terms on which the business was sold was that as from Dec. 31, 1918, until Sept. 15, 1919, pltf. should be deemed to have been carrying on the business on account of & for the benefit of the purchasers, & that pltf. should account & be entitled to be indemnified accordingly. For his services until the date of completion pltf. was to be paid a fixed sum monthly. Pltf. was assessed for super-tax on the profits of the business from Apr. 6, 1919, to Aug. 22, 1919. He paid the amount demanded & claimed to recover an indemnity from defts. : —*Held :* pltf., as agent of defts., was entitled to be indemnified by them in respect of the amount of super-tax paid by him, although defts. as a limited co. would not be liable to pay super-tax.—ADAMS *v.* MORGAN & Co., [1924] 1 K. B. 751 ; 93 L. J. K. B. 382 ; 130 L. T. 792 ; 40 T. L. R. 70 ; 68 Sol. Jo. 318, C. A.

1878. *Add. Annotation :—As to* (2) **Refd.** Weld-Blundell *v.* Stephens, [1919] 1. K. B 520.

1886. *Add. Annotation :*—**Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234 ; Britannia Hygienic Laundry Co. *v.* Thornycroft (1925), 94 L. J. K. B. 858.

1908. *Add. Annotation :*—**Mentd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

1941. *Add. Annotation :*—**Refd.** Christoforides *v.* Terry, [1924] A. C. 566.

1944. *Add. Annotations :*—**Distd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592. **Consd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1945. *Add. Annotations :*—**Apld.** French *v.* Leeston Shipping Co. (1921), 37 T. L. R. 453. **Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592.

1946. *Add. Annotations :—As to* (2) **Consd.** Warren Agdeshman (1922), 38 T. L. R. 588. **Refd.** Turpin *v.* Victoria Palace, [1918] 2 K. B. 539. *Generally*, **Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592 ; *Re* Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315. **Mentd.** Blackburn Bobbin Co. *v.* Allen, [1918] 2 K. B. 467 ; *Re* Comptoir Commercial Anversois & Power, [1920] 1 K. B. 868 ; Sweet *v.* Williams (1922), 128 L. T. 379.

1947. *Add. Annotation :*—**Refd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1947a. ——.]—By a contract in writing deft. appointed pltfs. to be sole agents for the United Kingdom, with certain exceptions, for a period of three years. Pltfs. were to be paid a commission at the rate of 22 per cent. on all goods sold throughout the United Kingdom, with the exceptions above referred to, whether the goods were sold through the instrumentality of pltfs. or not, & deft. agreed with pltfs. that he would keep them fully supplied with samples, & would execute all orders with due diligence, & would not, directly or indirectly, canvass orders or in any manner approach or solicit any of the customers, or potential customers, of pltfs. in respect of the sales of his goods. Before the expiry of the three years deft. broke these undertakings & then wrote to pltfs. cancelling the agreement : *Held :* as it was a necessary implication from the terms of the contract that pltfs. would not decline reasonably to introduce customers, the agreement was not void for lack of mutuality, & although the mere appointment of an agent on commission for a term of years does not carry with it the necessary implication that the business shall be carried on for that term, yet, as deft. had undertaken certain obligations to facilitate the earning of the commission & had broken his undertakings, he could not, by a purported cancellation of the contract, limit his liability for damages to the period prior to such purported cancellation. WARREN & Co. *v.* AGDESHMAN (1922), 38 T. L. R. 588.

1949. *Add. Annotation :*—**Mentd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592.

1950. *Add. Annotation : —As to* (2) **Refd.** Payzu *v.* Saunders, [1919] 2 K. B. 581.

v. ORAF (1922), 66 D. L. R. 713.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (a).

bi. —— *Loss through delay in delivery.*]—E. & Co., commission agents, entered into a contract with defts. under which they undertook to purchase & ship goods " on account & risk " of defts., & E. & Co. shipped the goods under a c.i.f. contract on board a German ship. Owing to the outbreak of war during transit the goods did not arrive at their destination until long after due time. On defts.' refusal to accept the goods they were sold :—*Held :* E. & Co. were entitled to recover damages for breach of contract.—MEREDITH *v.* ABDULLA (SAHIB) (1918), I. L. R. 41 Mad. 1060.—**IND.**

sm. *Broker buying wheat to meet deliveries.*]—Brokers were instructed by their principal to sell wheat for future delivery :—*Held :* when the principal could not deliver the wheat he instructed the brokers to buy the wheat necessary to cover his contracts, which they did, & he must repay to them the amount so expended.—CANADIAN Co., LTD. *v.* NICHOL, [1920] 3 W. W. R. 127 ; 53 D. L. R 13 Sask. L. R. 30.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (b).

sn. *Forwarding agent acting in accordance with ordinary duty.*] Defts., forwarding agents in Durban, who acted as the agents of pltf. in clearing & forwarding goods consigned to him from India, on Oct. 21, received a letter from a firm in India informing them that they had shipped a consignment of goods on behalf of pltf. The goods arrived on Oct. 20, & on Oct. 22 defts. cleared & trucked the goods to Johannesburg & sent pltf. a consignment note which he received on Oct. 26. Immediately on receipt of the note pltf. telegraphed to defts. instructing them to keep the goods for sale in Durban. Defts. on the instructions of pltf. had the trucks stopped & returned to Durban. Defts. in order to obtain delivery of the goods paid the railway charges & upon pltf.'s refusal to reimburse them d to hand the goods over to pltf. *Held :* defts. in railing the without awaiting special instructions had acted in accordance with their ordinary duty as forwarding agents, & in the absence of s ial instruct to the contr in so railing the goods. PACEL *v.* KEFFLER & Co [1923] App. D. 506. **S. AF.**

PART VIII. SECT. 3, SUB-SECT. 2. C. (c).

delivery access of broker to prove contract gal. v. LICHTZIER, [1 D. L. **CAN.**

PART VIII. SECT. 3, SUB-SECT. 2. D. (a).

sp. *Agent assuming liability to party.*]—Where a superintendent of road construction for a municipality ordered supplies on its behalf, & which were charged to it :—*Held :* as he was not legally liable on the accounts he had no cause of action against the municipality in respect thereof whether for payment or indemnity, although he had paid one of the accounts & judgment had been obtained against for another.—DICKINSON *v.*

1 W. W. R. 235 D. L. R. 383
13 Sask. L. R. 1.—**CAN.**

1951a. ——.]—By an agreement made between pltf. & a limited co., which carried on business in Lancashire, in consideration of pltf. subscribing for £1,000 in shares of the co., & of introducing to the co. certain new classes of goods to be manufactured by them, the co. appointed him their sole agent in the United Kingdom, India, & the Colonies for the sale of those goods for the term of seven years, if the agent should so long live, & thereafter until the agreement should be determined by six months' notice on either side. The agent was to use his best endeavours to obtain orders for the co.'s goods at prices to be from time to time agreed upon, & all orders obtained by the agent were at once to be communicated to the co., who upon approving or rejecting the same were to inform the agent thereof & who were to carry out such orders as were accepted without undue delay; & the agent was not definitely to accept orders for the co., but only subject to confirmation & acceptance by the co., such confirmation or acceptance not to be unreasonably withheld. The co. were to pay the agent a commission upon the invoiced prices of all goods delivered by the co., & duly paid for by the respective purchasers. A few months afterwards the co. required fresh capital, & they applied to pltf. to assist them in finding it, telling him that otherwise they would have to close down. Pltf. tried to do so, but failed. The co. then asked pltf. to give up the agency for the Manchester district, telling him that he would have to stand down so far as that district was concerned, in which case they thought that they could find the necessary capital, but he refused. The co. thereupon being insolvent passed resolutions for voluntary winding up & ceased to do business through pltf. & eventually sold their business. In an action to recover damages for breach of the agreement to employ pltf. as their agent for the seven years:—*Held:* the agreement was to employ pltf. as agent for the seven years & a term could not be implied to the effect that the co. could terminate the agency at any time by ceasing to carry on their business; & the circumstances coupled with the voluntary winding up showed a repudiation by the co. of the agreement, & they were therefore liable in damages for the breach.—REIGATE *v.* UNION MANUFACTURING CO. (RAMSBOTTOM), [1918] 1 K. B. 592; 87 L. J. K. B. 724; 118 L. T. 479, C. A.

Annotation:—**Reld.** Thomas *v.* Todd, [1926] 2 K. B. 511.

1952. *Add. Annotation:*—**Reld.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1953. *Add. Annotations:*—**Reld.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592; Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1957. *Add. Annotations:*—**Reld.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592; Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1961. *Add. Annotations:*—**Reld.** Taylor *v.* Oakes, Roncoroni (1922), 127 L. T. 267. **Mentd.** Moriarty *v.* Regent's Garage Co., [1921] 1 K. B. 423.

1968. *Add. Annotation:*—*Generally*, **Mentd.** *Re* Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315.

1974. *Add. Annotations:*—*As to* (1) **Consd.** Mortimer *v.* Beckett, [1920] 1 Ch. 571. *As to* (2) **Apld.** Mortimer *v.* Beckett, [1920] 1 Ch. 571.

1979. *Add. Annotation:*—**Mentd.** Hamilton *v.* Caldwell (1919), 88 L. J. P. C. 173.

1980. *Add. Annotation:*—*As to* (2) **Consd.** Martin *v.* Stout, [1925] A. C. 359.

2005. *Add. Annotation:*—*As to* (2) **Reld.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

2029. *Add. Annotation:*—**Reld.** *Re* Gunsbourg, *Ex p.* Trustee (1920), 89 L. J. K. B. 725.

2056. *Add. Annotation:*—**Reld.** Booth S.S. Co. *v.* Cargo Fleet Iron Co. (1916), 13 Asp. M. L. C. 451.

2092. *Add. Annotation:*—*Generally*, **Mentd.** *Re* Eyre-Williams, Williams *v.* Williams, [1923] 2 Ch. 533.

ART VIII. SECT. 3, SUB-SECT. 3.—B.

1950 ii. For this number read "1967 i."

1967 ii. —— ——.]—In a five y agreement between a selling agent & a firm of merchants it was provided that, if at the end of the first three years the agent had not realised a certain turnover, the merchants should be entitled to terminate the agreement. The agreement further provided that the merchants undertook to supply goods to the agent, who was bound to buy exclusively from them. At the end of the three years the value of the goods sold & delivered by the

turnover, merchants terminated
the The value of the sales
by had in fact
the stipulated
but the value of the goods
red by him fell short of
it, owing to the failure of the merchants to supply him with the full amount of goods ordered by
The merchants, who were not
facturers, were dependent on
to themselves by the manufa
owing to war conditions, they were
unable to obtain the full
they required. They had, however, obtained sufficient goods to have implemented the agent's orders, but they preferred to distribute these goods ratably among all their agents & customers, the agent in question receiving his full share. In an action by the agent against the merchants concluding for damages for unjustifiable termination of the agreement:—*Held:* defts. were not entitled to terminate the agreement.—DOWLING *v.* METHVEN, SONS & CO., LTD., [1921] S. C. 948; 59 Sc. L. R. 7.—**SCOT.**

1978 iii. —— ——.]—Pltf. & defts., an English business house, entered into an agreement by correspondence by which pltf. was to be the selling agent of defts.' goods in British Columbia. In the letter from defts. setting out the proposed terms of agreement were the words, "this offer to be firm for one year." Defts. broke the agency agreement during the first year:—*Held:* pltf. was entitled to damages on the basis of loss of profits on two contract, as being reasonable in the

CAN.

1978 iv.
l to employ

brokers for the business of a co. during the subsistence of an agreement which they themselves had as brokers to the co.; the latter agreement was for five years. In Aug. 1912, resps. wrongfully determined the agreement with applts. On Dec. 2, 1912, resps., *bonâ fide* & not as a means of limiting the damages, made a new agreement with the co., the terms of which were inconsistent with, & thus put an end to, the original agreement between resps. & the co. In Jan. 1913, applts. sued resps. for damages:—*Held:* the damages recoverable were limited to the amount which applts. would have earned as under-brokers down to Dec. 2, 1912.—LACHMANDAS, ETC. *v.* RAGHUMULL (1919), L. R. 46 App. 314; 24 C. W. N. 577.—**IND.**

PART VIII. SECT. 4, SUB-SECT. 2.

st. *Liability o ipals to indemnify of co-principal.*]—The release of one co-principal does not release another co-principal from his obligation to exonerate & contribute to the extent to which he would have been ultimately liable had the one co-principal not been
MALOWANY *v.* PASEMKO, W. W. R. 553.—**CAN.**

Part IX.—Relations between Principal and Third Parties.

2094. *Add. Annotation :*—**Mentd.** Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 321.

2095. *Add. Annotation :*—**Mentd.** Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 321.

2096. *Add. Annotation :*—**Refd.** Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 321.

2098. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

2106. *Add. Annotations :*—**Refd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189 ; Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 321.

2109. *Add. Annotation :*—*As to* (1) **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

2120. *Add. Annotation :*—**Consd.** Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.

2125a. Action for specific performance—Effect of non-disclosure of principal.]—Pltf. procured C. to enter into an agreement to purchase land from defts. C. never disclosed to defts. that he was acting as the agent of pltf. Subsequently C. explained to defts. that he was acting as agent for pltf., & at his request the agreement was cancelled. In an action for specific performance :—*Held :* the agreement not being one in which any personal qualification by C. was a material factor, the mere non-disclosure of the person actually entitled to the benefit of the contract for the sale of real estate did not amount to misrepresentation.—DYSTER *v.* RANDALL & SONS, [1926] Ch. 932 ; 95 L. J. Ch. 504 ; 135 L. T. 596 ; 70 Sol. Jo. 797, C. A.

2139a. Agent acting in his own interest.]—Where an agent, in contracting on behalf of his principal, has acted within the terms of a written authority given to him by the principal, but the existence of which was not known to the other party to the contract, the principal cannot, if the other party has acted *bonâ fide*, repudiate liability on the contract on the ground that the agent, in making it, acted in his own interests, & not in those of his principal.—HAMBRO *v.* BURNAND, [1904] 2 K. B. 10 ; 73 L. J. K. B. 669 ; 90 L. T. 803 ; 52 W. R. 583 ; 20 T. L. R. 398 ; 48 Sol. Jo. 369 ; 9 Com. Cas. 251, C. A. ; *revsg.*, [1903] 2 K. B. 399.

Annotations :—**Consd.** Willis, Faber *v.* Joyce (1911), 104 L. T. 576; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Refd.** British Marine Mutual Insce. Assocn. *v.* Draffen, Read & Morgan (1903), 47 Sol. Jo. 672 ; Ruben *v.* Great Fingall Consolidated, [1904] 2 K. B. 712 ; Malcolm, Brunker *v.* Waterhouse (1908), 24 T. L. R. 854 ; Lloyd *v.* Grace, Smith, [1912] A. C. 716. **Mentd.** Cuthbert *v.* Robarts, Lubbock, [1909] 2 Ch. 226.

2139b. Account stated & signed by agent.]—In Mar. 1918, a tank steamer was damaged by

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PART IX. SECT. 2, SUB-SECT. 1.

b i. —— *Goods sold—Knowledge of purchaser.*]—M. left two hundred & fifty cattle with B., a cattle dealer. He gave B. written authority to sell forty-eight, & B. was to graze the rest. B. sold one hundred cattle to C., purporting to act as M.'s agent, showing the written authority & alleging further oral authority. At B.'s request C. made a cheque for the purchase price payable to him. C. bought in good faith & for value. M. repudiated the sale & sued to vindicate the cattle sold without authority :—*Held :* the written authority & the request for personal payment should have put the purchaser upon inquiry.—MULLER *v.* (1923), 44 N. L. R. 69.—**S. AF.**

2106 i. *Agent holding principal's funds—Money paid into agent's banking account—Agent in fiduciary character.*]—Money received by a commission agent from sales of his customers' property, is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity, & if it is mixed by the agent with his own money in his general banking account & he becomes bkpt., the money can be followed if it is still traceable.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK (1923), 4 C. B. R. 379 ; [1923] 3 W. W. R. 257.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 1.—A.

2120 viii. ——.]—J., as agent of pltf., advanced sums to deft. in consideration of deft.'s going to work on a sugar estate, on behalf of K., who supplied money for the advance, to whom J. had to account, & to whom J. stated that he had accounted. Deft. stated that J. had recruited him to work for some person whose name was not given. Deft. contended in an action for refund of the advance that pltf. could not sue without cession of action from K. :—*Held :* pltf. had a right of action against deft.—GADELEA *v.* MOUNTJOY, [1921] E. D. L. 151.—**S. AF.**

2a. *Action for money paid under contract.*]—Pltf., desiring to have ten vessels constructed in Canada, entered into a preliminary agreement with A. whereby A. was to enter into contracts with three builders for the construction of the vessels, called "building contracts," & at the same time into contracts with pltf., called the "vessel contracts" providing for the payment for vessels, the nature of their construction & due delivery thereof. The "building contract" & the "vessel contract" each expressly stated that a copy of the other was attached to & made a part of it. By the "building contract" deft. covenanted to build the vessels according to the terms of the "vessel contract," & this contract was expressed to be made with pltf. as well as with A., & deft. also confirmed provisions of the "vessel contract" for payment of the instalments of the purchase price to A. & appointed A. his agent to receive payments. Upon the signing of the contracts a first payment made by pltf. to A. was distributed by A. between the three "builders," who with the construction of the Upon pltf.'s failure to make the next deposit as provided for in the "vessel" contract, deft. gave notice terminating the contract. Pltf. having brought action for repayment by deft. of money paid on account of the vessels, less such expenses as deft. had incurred by virtue of the contract :—*Held :* pltf. had no right of action.—VAN HEMELRYCK *v.* NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO., VAN HEMELRYCK *v.* NORTHERN CONSTRUCTION CO., VAN HEMELRYCK *v.* PACIFIC CONSTRUCTION CO. (1920), 29 B. C. R. 39 ; 55 D. L. R. 589.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 1.—B.

2134 i. *General rule.*]—BOLCH & CO., LTD., N. Z. L. R. 164.—**N.Z.**

2135 ii. ——.]—Deft., owner of a theatre, entered into a contract with W., an advertising manager, under which W. was to conduct an advertising campaign relative to the theatre. The campaign was to take the form of a contest for prizes to be offered for selling tickets of admission to the theatre. Pltf. was assignee for value of a prize-winner's rights :—*Held :* the agent's promises to the contestants were the promises of deft. as principal, & deft. was liable as principal.—ROSS *v.* KONOLD, [1924] 1 D. L. R. 750 ; 1 W. W. R. 428 ; 34 Man. L. R. 111.—**CAN.**

2b. *Contract in agent's name—Under seal.*]—Defts. made an agreement with B. for conditional sale to him of a large quantity of land, the intention of the parties being for its subdivision & sale for fruit-farming purposes. All surveys & sales were to be approved by defts., a minimum price per acre in selling was stipulated, & the proceeds of sales were to be paid into a bank to defts.' credit, & title to be retained by defts. until the full purchase price of the sale to B. was realised. On certain amounts of sales being made, defts. agreed to do certain clearing, irrigating & tree-planting, B. acting as their agent in the superthereof. B. was to receive on sales made, should he not succeed in carrying out the agreement. B. made an approved agreement with pltf. for sale of a lot to be selected by pltf. who sought to recover from defts. the amount of payments made by him :—*Held :* the fact that pltf.'s agreement was with B., in B.'s own name & under seal, did not prevent recovery from defts. as for money had & received.—HITCHCOCK *v.* COLUMBIA VALLEY LAND CO., LTD., [1919] 2 W. W. R. 969 ; 48 D. L. R. 737.—**CAN.**

fire & her repairs were entrusted to a firm of ship repairers at A. The steamer was insured. The owners sent out an agent from L. to expedite the repairs & authorised him to sign the repair account with the Lloyds' surveyor as "approved subject to adjustment & conditions of insurances." In Jan. 1919, the repairers delivered to the owners an account of the repairs signed by the owners' agent & by Lloyds' surveyor in the above form after a detailed examination of the account. The owners paid part of the amount due on this account but declined to pay tl balance on the ground that the charges were excessive. The repairers sued the owners for the balance of amount due for work & labour done by pltfs. & materials supplied at the request of defts., &, in the alternative, claimed the balance as being the amount found due from defts. to pltfs. on accounts stated between them & contained in an account signed by defts. by their agent, less the sums since paid by defts. in respect thereof. Defts. denied that the agent was authorised to agree the amounts due from defts. to pltfs., or that he in fact purported to agree such amount, or that the account constituted an account stated:—*Held:* the signature of defts.' agent was an agreement by him, with their authority, that the amount charged for the repairs was correct, &, there being no ground for re-opening the account, pltfs. were entitled to judgment. - CAMILLO TANK S.S. CO., LTD. *v.* ALEXANDRIA ENGINEERING WORKS (1921), 38 T. L. R. 134, H. L.

2168. *Add. Annotation:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

2172. *Add. Annotations:*—**Refd.** Norbury Natzio *v.* Griffiths, [1918] 2 K. B. 369; Rodriguez *v.* Speyer, [1919] A. C. 59; Bennett *v.* Whitehead, [1926] 2 K. B. 380; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2176. *Add. Annotation:*—**Mentd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2177. *Add. Annotation:*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2183. *Add. Annotations*—**Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2184. *Add. Annotation*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2188. *Add. Annotation:*—*As to* (3) **Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2193. *Add. Annotation:*—**Consd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2194. *Add. Annotation:*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2195. *Add. Annotations:*—**Apld.** Parr *v.* Snell, [1923] 1 K. B. 1; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Moore *v.* Flanagan, [1920] 1 K. B. 919; Clarkson *v.* Davies, [1923] A. C. 100; Duffner *v.* Bowyer (1924), 40 T. L. R. 700; The Koursk, [1924] P 140; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023. **Mentd.** Norbury Natzio *v.* Griffiths, [1918] 2 K. B. 369; Rodriquez *v.* Speyer, [1919] A. C. 59; *Re* Pennington & Owen (1925), 95 L. J. Ch. 93; Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2197. *Add. Annotations:*—**Folld.** Moore *v.* Flanagan & Wife, [1920] 1 K. B. 919. **Apld.** London General Omnibus Co. *v.* Pope (1922), 38 T. L. R. 270. **Refd.** Duffner *v.* Bowyer (1924), 40 T. L. R. 700; Debenham *v.* Perkins (1925), 133 L. T. 252; Bennett *v.* Whitehead, [1926] 2 K. B. 380; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2198. *Add. Annotation:*—*As to* (1) **Distd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

2199. *Add. Annotations:*—*As to* (1) **Refd.** Moore *v.* Flanagan & Wife, [1920] 1 K. B. 919; Parr *v.* Snell, [1923] 1 K. B. 1.

2201. After this case insert "Res judicata generally, *see* ESTOPPEL, Vol. XXI., pp. 159 *et seq.*, 198 *et seq.*"

2205a. —— **Acceptance of payment from principal—After receiving order against agent.**]—Resp. was employed by the debtor, who was acting for a co., but who was himself personally liable on the contract. While the contract was running, a receiving order was made against the debtor, but he was not adjudicated bkpt., the receiving order being discharged & an order being made approving a composition of 20*s.* in the pound. After the breach of contract by the debtor resp. took the salary offered to him by the co., & a proof put in by resp. for damages for the breach was rejected by the trustee of the composition on the ground that resp. had elected to look to the co. for the fulfilment of the contract:—*Held:* resp. had not, by his conduct, finally elected in law to look to the co. for the fulfilment of the contract, & the proof ought to be allowed.—*Ex p.* PITT (1923), 40 T. L. R. 5, C. A.

PART IX. SECT. 3, SUB-SECT. 2.—F. (a).

2172 ii. - ——.]—GLADUE *v.* WALCH, No. 2510 xiv., *post*.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.—F. (c).

2194 v. ——.]—M., without disclosing the fact that he was acting as agent for the Crown, purchased hay from A., & was sued for a balance of purchase price. At the trial t became known to A., but theless proceeded with the & recovered Held: A., having elected to to judgment against M., could not sue the Crown.—DES- v. R. (1919), 18 Exch. C. R. 461.—**CAN.**

2194 vi. ——.]—Engineers brought an action against shipowners for payment of the balance of the contract price of two boilers for a steamship. The shipowners denied liability, & brought a counter-action for s in respect of breach of con- The actions were conjoined & a proof was led, in the course of which it transpired that the shipowners not the registered owners of the steam- as had up to that time been l, but merely acted as managers for a co. which owned her. Both parties thereupon amended their records; the shipowners averring in both actions that they had contracted, & were litigating, as agents for the limited co.; & the engineers, as defenders in the counter-action, pleading "no title to sue":—*Held:* by prosecuting their own action to decree, the engineers had elected to treat defts. as their debtors in the contract.—CRAIG & CO. *v.* [1923] S. C. 472.—**SCOT.**

2233. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

2245. *Add. Annotations :—As to* (2) **Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244.

2246. *Add. Annotations :*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Rand *v.* Craig, [1919] 1 Ch. 1; Mintz *v.* Silverton (1920), 36 T. L. R. 399. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

2252. *Add. Annotation :*—**Mentd.** *Re* Llewellyns' Settlmt., Official Solicitor *v.* Evans, [1921] 2 Ch. 281.

2253. *Add. Annotation :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

2267. *Add. Annotation :*—**Refd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1.

2268. *Add. Annotation :*—**Consd.** Rand *v.* Craig, [1919] 1 Ch. 1.

2280. *Add. Annotations :*—**Distd.** Dyster *v.* Randall, [1926] Ch. 932. **Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

2282. *Add. Annotations :*—**Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244.

2284. *Add. Annotations :*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Rand *v.* Craig, [1919] 1 Ch. 1; Mintz *v.* Silverton (1920), 36 T. L. R. 399. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

2285. *Add. Annotation :*—**Mentd.** Kent *v.* Atkinson, [1923] P. 142.

2286. *Add. Annotations :*—**Consd.** Rand *v.* Craig, [1919] 1 Ch. 1; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762. **Refd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Soanes *v.* L. & S. W. Ry. (1919), 88 L. J. K. B. 524.

2287. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

2292. *Add. Annotations :*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Rand *v.* Craig, [1919] 1 Ch. 1. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Mintz *v.* Silverton (1920) 36 T. L. R. 399; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

2295. *Add. Annotation :* **Refd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452.

PART IX. SECT. 3, SUB-SECT. 2.—F. (d).

2206 i. *Election to sue one discharges other.*]—MURRAY *v.* DELTA COPPER CO., LTD., [1925] 4 D. L. R. 1601.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—A.

2245 v. ——.]—Resp. had taken fire insurance policies in several cos., amongst which were applt. co. & the F. Co., both represented by D. as their agent. The property insured having been destroyed by fire, resp. received from the adjuster a memorandum showing him entitled to $2,861.45 as against the F. Co., & to $1,841.45 & $2,861.60, as against applt. co., under two policies. Later on, the F. Co., sent to D. their cheque payable to resp., & D. appropriated its proceeds by forging the signature of resp. The latter, pressing D. for a settlement, accepted as an accommodation D.'s personal cheque for the amount of his claim against the F. Co. On the afternoon of the same day, D. informed resp. that the cheque of the F. Co. had arrived. At that time, D. had also received from applt. co. two drafts, payable to the order of resp. D. obtained resp.'s indorsement on the larger one of the drafts on the representation that it was the cheque of the F. Co., which he would use to reimburse himself for his personal cheque, & also secured resp.'s signature on the other draft on the representation that it was a receipt, the execution of which was a formality required by the F. Co. D. indorsed both drafts & deposited them to his own credit, & they were later paid & charged to applt. co.'s account by the bank. Resp. having sued applt. co.:—*Held :* in the fraud practised upon resp., D. was acting within the scope of his agency so as to make his fraud that of his principals, applt. co.; & the indorsements on the drafts of applt. co. were not binding on resp. in the circumstances in which they were given.—NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURG *v.* MARTIN, [1924] 3 D. L. R. 1012; S. C. R. 348; *affg.*, [1923] 4 D. L. R. 574; 3 W. W. R. 897; 19 Alta. L. R. 786; *affg.*, [1923] 3 D. L. R. 220.—**CAN.**

2246 ii. ——.]—Pltf., believing Z. to be agent of defts., arranged with him for the shipment of two carloads of grain to defts., & signed the bills of lading, on which his name appeared as shipper & defts.' name as consignees. The documents were signed partly in blank, certain particulars being left to be filled in by Z. Z. used the documents for his own purposes, borrowed money upon them from the bank, signed his own name to them, crossed out defts.' name as consignees & substituted that of the bank Defts., being notified of shipment, paid the bank, procured the bills of lading, disposed of the grain & settled with Z. for the proceeds:—*Held :* defts. were liable to pltf. for conversion for the value of the grain.—LENO *v.*

1 W. W. D. L. R. 28
CAN.

2246 iii. ——.]—A principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the principal or for the benefit of the agent.—DINABANDHU SAHA *v.* ABDUL LATIF MOLLA (1912), I. L. R. 50 Calc. 258.—**IND.**

2253 iv. ——.]—Pltfs., who resided in England, were the owners of a sub-division in Calgary & were represented there by agents. L. obtained from the agents a listing of parcels of lots & authority to obtain purchasers. L. induced deft. to purchase lots for $3,400 under an agreement made by a fictitious person as vendor, which L. delivered to deft. & received from him $1,500 as the cash payment. L. brought in to pltfs.' agents an agreement for sale of the lots to a fictitious person for $3,000 of which $1,900 was payable in cash, which sum only be paid in. He also subsequently collected from deft., but never paid in, the deferred payments under deft.'s agreement. Pltfs. had no knowledge of L.'s fraud until after all the money had been paid to him:—*Held :* pltfs. were liable for the additional $500 of cash payment fraudulently contracted for & received by L.—DENTON *v.* GOODMAN, [1922] 1 W. W. R. 117; 62 D. L. R. 559.—**CAN.**

2253 v. —— *Agent added as co-*agent of pltf., the vendor, made false re[illegible] without the knowledge of his principal in order to induce deft. to purchase property belonging to pltf. Deft., on discovering that the r[illegible] were false, refused to transaction &, on being sued by pltf. for such non-performance, brought a counterclaim for rescission & damages & joined the agent as co-defendant:—*Held :* the agent was rightly made co-defendant.—ROTHWELL *v.* ATTWOOD,

1 D. L. R. 43.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 1.—A.

2282 vii. —— *Negligence of agent's* [illegible] An agent is not personally responsible for damage done by the negligence of [illegible] employed by him in the service of principal, but the principal or those actually employed only are liable.—WISTERMUTE *v.* MOULTON (1922), 65 D. L. R. 653.—**CAN.**

2282 viii. ——.]—Deft. agreed to provide teams & men to cart goods for pltf., & in performing such contract caused damage to certain roads. The county council took proceedings, & obtained judgment against pltf. for recovery of the expenses incurred by the council by reason of the damage caused by the extraordinary traffic carried on by deft. On a claim by pltf. to be indemnified by deft. for the amount of the judgment:—*Held :* deft. was pltf.'s agent to do the carting, & the liability to pay for the damage rested on pltf. BEGG *v.* HAGAN, [1921] N. Z. L. R. 220.—**N.Z.**

PART IX. SECT. 4, SUB-SECT. 1.—B.

2299 i. *Funds received for investment—By local manager of bank—Improvident investment.*]—Two persons who formed the local advisory board of deft. co. purchased on defts.' behalf for $7,000 the balance unpaid under an agreement for sale of sub-divided property, which amounted to about $7,500 taking the assignment in their own name "as trustees." One of these persons, the local manager of deft. co., had an individual private client, pltf., for whom he had invested money. Having $5,000 of pltf.'s [illegible] on hand he invested it by

2305. *Add. Annotations :*—**Mentd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 3 K. B. 532; The Tervaete, [1922] P. 259; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385.

2309. *Add. Annotation :—As to* (1) **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

2317. *Add. Annotations* **Apld.** Pratt *v.* Patrick, [1924] 1 K. B. 488 **Consd.** Parker *v.* Miller 42 T. L. R. 408.

2318. *Add. Annotation :—As to* (1) **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

2318a. ——— ———.]—Deft. was in his motor car, with him, on his invitation, being two friends, E. & P. E. drove the car, & owing to his negligence it collided with another vehicle, & P. sustained injuries from which he died. P.'s widow sued deft. under Fatal Accidents Act, 1846 (c. 93), for damages :—*Held :* as deft. was in the car, & there was no evidence that he had abandoned his right of control, he was liable notwithstanding that by a casual delegation he had entrusted its actual physical management & mechanical control to E.—PRATT *v.* PATRICK, [1924] 1 K. B. 488; 93 L. J. K. B. 174; 130 L. T. 735; 40 T. L. R. 227; 68 Sol. Jo. 387; 22 L. G. R. 185.

2326. *Add. Annotations : —Generally*, **Mentd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

2331. *Add. Annotation :*—**Distd.** Goh Choon Seng *v.* Lee Kim Soo, [1925] A. C. 550.

2336. *Add. Annotation :—Generally*, **Mentd.** Jefferies & Atkey *v.* Derbyshire Farmers, (1920), 36 T. L. R. 825.

2339. *Add. Annotations :—As to* (1) **Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

2345. *Add. Annotation :*—**Mentd.** Camillo Tank S.S. Co. *v.* Alexandria Engineering Works (1921), 38 T. L. R. 134.

2348. *Add. Annotation :*—**Mentd.** Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

2409. *Add. Annotation :*—**Mentd.** North Staffordshire Ry. *v.* Edge (1919), 89 L. J. K. B. 78.

2446. *Add. Annotation :*—**Refd.** Clayton-Greene *v* De Courville (1920), 36 T. L. R. 790.

2448. *Add. Annotation :*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2449. *Add. Annotation :*—**Mentd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.

2455. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407. **Mentd.** Ammonia Soda Co. *v.* Chamberlain, [1918] 1 Ch. 266; Piercy *v.* Mills, [1920] 1 Ch. 77.

buying a part interest in the assignment of agreement for sale, & a declaration of trust was made by the trustees in pltf.'s favour to the extent of $5,000 & interest. The investment turned out badly & pltf. sued deft. co. for recovery of his money :—*Held :* pltf. was entitled to recover.—MCCRINDLE *v.* LONDON SCOTTISH CANADIAN INVESTMENT SYNDICATE, [1922] 3 W. W. R. 977; 70 D. L. R. 612.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 1.—C.

2317 iia. ——— ———.]—A motor le, the property of deft., which ridden by R., deft.'s brother, l pltfs. Deft.'s brother had general permission to ride the motor bicycle for himself or for deft., but he was never in deft.'s employment. The jury found that the rider was acting as the agent or servant of deft. in the management of the motor bicycle at the time of the accident :—*Held :* the jury's findings & verdict must

v. REYNOLDS, [1926] N.

2319 i. Add " *reversd.*,
MURRAY *v.* JENKINS (S. C. R.

PART IX. SECT. 5, SUB-SECT. 2.—B.

2384 i. ——— ———.]—A letter from an agent to his principal which is a narrative of an interview the agent & a third party, if in evidence at all, is not evidence against the principal of a parol acceptance by the third party of an offer made to him.—SWAN *v.* [1918] 1 I. R. 151.—**IR.**

PART IX. SECT. 6, SUB-SECT. 1.—B.

2396 ii. ——— . *to agent's interest to disclose.*]—K ledge communicated to an agent of a fact which it was not the agent's interest to disclose & which he did not disclose to the principal cannot be imputed to the principal.—TEXAS CO. *v.* BOMBAY BANKING CO., LTD. (1919), 24 C. W. N. 469.—**IND.**

2408 ii. ——— ———.]—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY, [1921] 3 W. W. R. 658.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B.

2428 iv. ———.]—QUEBEC FEDERATED CO-OP. CO. *v.* FARMERS FENCE CO., [1925] 2 D. L. R. 571; *affg.* Q. R. 37 K. B. 315.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 3.

sc. *In general.*] — By conferring authority upon his agent the principal gives third persons the right to assume that they can deal with the agent in the matters covered by that authority until they receive notice of his authority having been revoked, or at least until some circumstance arises which in all reason should put them upon inquiry, & this rule applies especially in favour of third parties who began to deal with the agent while his authority did in fact exist.—WATSON *v.* OWELL, [1921] 2 W. W. R. 128; 14 Sask. L. R. 424; 58 D. L. R. 615.—**CAN.**

sd. *Owner farm to* . . . an owner of land has ed his employee to manage a farm & to of the crop, from year to year, to an elevator co. & account for the proceeds, & the owner changes his course of dealing, & leases the land to the former employee on a crop-payment rental, the owner is not entitled to relief against the elevator co. for the loss of his share by the lessee, unless notice of the change of relationship has been given to the co.—NORTH AMERICAN FINANCE CO. *v.* WESTERN ELEVATOR CO. (1922), 66 D. L. R. 467; 32 Man. L. R. 76; [1922] 2 W. W. R. 162.—**CAN.**

sk. *Agent accepting goods after revocation.*]—Applts., a Durban firm, entered through V. into contracts with farmers in Alexandria for the supply of chicory. In 1917 V. had authority to accept chicory on behalf of applts., but when applts. entered into a contract with resps. for the 1918–1919 crop of chicory, this authority of V. had been withdrawn. Resps. tendered a consignment of chicory, which was accepted at Alexandria after examination by V., & sent to applts. at Durban; but it was rejected by applts. as being unsound in terms of the contract. Prior to the sending off of this consignment, applts. had notified all the s by circular that they would any chicory not "tip-top," charge railage & storage to the —*Held :* the circulars should put resps. on inquiry as to V.'s authority.—ELLIS BROWN *v.* VAN ROOYEN, [1920] E. D. L. 81.—**S. AF.**

sk. *Agent contracting after revocation.*]—Deft. authorised his wife to sell land, but before the contract with pltf. was concluded he revoked his wife's authority. The revocation was not communicated to pltf. :—*Held :* deft. was bound by the contract entered into by his agent with pltf.—WILLIAMS *v.* WEST, [1921] E. D. L. 352.—**S. AF.**

Part X.—Relations between Agent and Third Parties.

2473. *Add. Annotation :*—**Reld.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2474a. ——.]—The owners of a chartered ship sued the K. Coal Co. for demurrage at the port of loading under a charterparty expressed to be entered into "between G. T. G. & Co., owners' agents, & A. B. Co., Copenhagen, charterers." The charterparty, which was on a printed form, provided for payment of demurrage by "the charterers," & at the end of the charterparty the following stipulation was added in writing: "Freight & demurrage (if any in loading) to be paid in Glasgow by the K. Coal Co., Ltd." The charterparty was signed as follows: "For the A. B. Co., Copenhagen, J. B. J., of the K. Coal Co., Ltd. For & by telegraphic authority of owners, for G. T. G. & Co., J. M., as agents only." It was admitted that J. B. J. signed on behalf of the K. Coal Co.:—*Held:* (1) the K. Coal Co. were not by reason of the form of the signature made liable upon the charterparty; (2) the clause in writing did not import a promise of liability sufficient to rebut any inference to the contrary from the form of the signature.—KIMBER COAL CO. *v.* STONE & ROLFE, LTD., [1926] A. C. 414; 95 L. J. K. B. 601; 135 L. T. 161; 42 T. L. R. 430; 31 Com. Cas. 333; 17 Asp. M. L. C. 37, H. L.

2475. *Add. Annotation :*—*Generally*, **Mentd.** Winterbotham, Gurney *v.* Sibthorp & Cox, [1918] 1 K. B. 625.

2501. *Add. Annotations :*—**Reld.** Phillips *v.* Brooks, [1919] 2 K. B. 243; Said *v.* Butt, [1920] 3 K. B. 497. **Mentd.** Berners *v.* Fleming, [1925] Ch. 264.

2502. *Add. Annotation :*—**Consd.** Dyster *v.* Randall, [1926] Ch. 932.

2504. *Add. Annotation :*—**Consd.** Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.

2516. *Add. Annotation :*—*Generally*, **Mentd.** Stokes *v.* Whicher, [1920] 1 Ch. 411.

2518. *Add. Annotation :*—**Mentd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

2523a. Judgment obtained against undisclosed principal — Judgment unsatisfied.] — A person making a contract with an agent, who is acting on behalf of an undisclosed principal, cannot sue the agent on the contract after having obtained judgment upon it against the undisclosed principal, even though such judgment is still unsatisfied. — LONDON

PART X. SECT. 1, SUB-SECT. 1.—A. (a) i.

2457 i. *Agent cannot sue.*]—Pltf. sent to defts. a quotation for goods, written on paper headed, "Niels Storaker, Representative for Alliance Export & Import Co., Christiania, Norway. All orders & contracts are subject to the suppliers' terms of contract. No order or contract is firmly accepted until the suppliers have consented to book it." In the letter he wrote: "All orders are booked on the understanding that my principals are given the option of shipping by steamer or sailing vessel." Defts. gave pltf. an order. Pltf. wrote to defts. saying: "I have cabled the order over to-day & I hope soon to be able to give upon cable acceptance." Subsequently he wrote: "I am glad in being able to inform you that the above-mentioned order has been booked by my principals & will send you official confirmation in due course." Pltf.'s letters were all signed "Niels Storaker" without any qualification:—*Held:* pltf. was contracting merely as agent, not as principal, & was not entitled to sue on the contract.—STORAKER *v.* SOUTHCOTE & LONG, LTD. (1920), 20 S. R. N. S. W. 190.—**AUS.**

2457 ii. ——.]—An order for books, addressed to the publishers on a form apparently supplied by them, requested delivery through "your distributors," contained an agreement to pay them (the distributors) at their office & provided that "this order to be binding shall be accepted by them." The distributors supplied the books, & sued for the price:—*Held:* the action was not maintainable.—WISE *v.* KERR, [1925] 1 W. W. R. 819; 35 B. C. R. 161.—**CAN.**

2467 i. *Agent real principal.*]—Where an agent names his principal & makes the contract as agent on his behalf, he cannot enforce it, even though he is the real principal, unless the other party has affirmed the contract with knowledge of the fact.—GLASGOW *v.* N. Z. L. R.

PART X. SECT. 1, SUB-SECT. 1.—A. (a) ii.

2471 vi. —— *Father & son.*]—A acting for a disclosed principal in a contract is not liable thereon, unless there be circumstances to show that he intended to render himself liable. The fact that a son residing with his father for a physician to come attend his father's servant who is ill raises no presumption that the son to pay for such services.—BLEECKER *v.* STUTSMAN, [1920] 3 W. W. R. 614; 51 D. L. R. 662.—**CAN.**

2483 i. *Agent real principal.*]—Pltf. signed an order for the purchase of a tractor addressed to a co., for whom deft. claimed to have made the sale as agent only:—*Held:* deft. was liable as the real vendor.—PETERSON *v.* CUSHMAN MOTOR WORKS, [1922] 2 W. W. R. 1041; 67 D. L. R. 38.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—A. (b) ii.

e i. ——.]—Every person who in making a contract discloses the existence, but not the name, of the principal on whose behalf he is acting, is personally liable on the contract to the other contracting party.—GLADUE *v.* WALCH, [1918] 3 W. W. R. 975; 43 D. L. R. 757.—**CAN.**

sl. *Person contracting for "buyer."*]—In pursuance of authority given by deft. his agents purchased sheep for pltf. In none of the telegrams between pltf. & deft.'s agents by which the purchase was arranged was deft. named, but the last telegram from the agents contained the words "Buyer confirms sale":—*Held:* the words "Buyer confirms sale" showed that deft.'s agents were contracting as agents, & relieved them from personal liability on the contract.—MURRAY *v.* HOPKINS, [1919] N. Z. L. R. 689.—**N.Z.**

PART X. SECT. 1, SUB-SECT. 1.—A. (c) i.

2497 v. ——.]—Where an agent for an undisclosed principal contracts on such terms as import that he is the real & only principal, the undisclosed principal cannot sue or be sued on the contract.—WEST *v.* DILLICAN, [1921] N. Z. L. R. 617.—**N.Z.**

2497 vi. —— *Agent real principal.*]—Where a person who purports to contract as agent for an undisclosed principal is in fact the principal in the transaction, it is not clear whether or not he is entitled to sue on the contract as principal.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

2497 vii. —— *principal.*]—In an action against owners for payment of the balance of the contract price of goods for a ship, the shipowners counterclaimed for damages for breach of contract. In the course of the action it appeared that the shipowners were not the registered owners of the ship, but merely acted as managers for a co. which owned her:—*Held:* as pltfs. had in the circumstances elected to treat defts. as their debtors, defts. were entitled to counterclaim for damages although the damages had been suffered by the principals whom they represented, & not by themselves.—CRAIG & CO. *v.* BLACKATER, [1925] S. C. 472.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 1.—A. (c) ii.

2510 xiv. ——.]—Where a makes a contract in his own without disclosing either the or existence of a principal, he is primarily liable on the contract to the other contracting party, GLADUE *v.* WALCH, [1918] 3 W. W. R. 975; 43 D. L. R. 757.—**CAN.**

2510 xv. ——.]—In an action for the hire of a dredge obtained by deft. M. from pltf., relief was sought against deft. J. as undisclosed principal:—*Held:* suspicious circumstances in the relations between M. & J. were not sufficient to support the judgment against J., in the face of the denial of defts. that any such relation existed.—NOVA SCOTIA DREDGING CO., LTD. *v.* MUSGRAVE & CO. (1918), 52 N. S. R. 71; 40 D. L. R. 580.—**CAN.**

2510 xvi. ——.]—An agent, who does not clearly indicate to the third party that he is acting as an agent, is personally liable.—HILLS *v.* CANADIAN CO., [1923] 3 D. L. R. 9—**CAN.**

2510 xvii. ——.]—WEST *v.* , No. 2497 v., *ante*.—**N.Z.**

GENERAL OMNIBUS CO., LTD. *v.* POPE (1922), 38 T. L. R. 270.

2530. *Add. Annotation :*—**Mentd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

2531. *Add. Annotations :—As to* (1) **Refd.** Ariadne S.S. Co. *v.* KcKelvie, [1922] 1 K. B. 518. *As to* (2) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2537. *Add. Annotations :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2542. *Add. Annotations :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518. **Mentd.** Brightman *v.* Tate, [1919] 1 K. B. 463.

2543. *Add. Annotations :*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 411. **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2544. *Add. Annotation :*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2545. *Add. Annotations :* **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2546. *Add. Annotations :*—*As to* (1) **Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 5118; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492; Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (2) **Apprvd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492. *Generally*, **Mentd.** Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.

2549. *Add. Annotation :*—*As to* (2) **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2549a. —— —— **Agents also described as charterers.**]—A charterparty was expressed to be made "between T. H. S. & Co., agents for the owners" of a steamer, "& J. McK. & Co., charterers," & was signed "For & on behalf of J. McK. & Co. (as agents), J. A. McK." The steamer was to load a cargo of coal on the Tyne & proceed to a foreign port, & provision was made for the payment by the charterers of demurrage in the event of the steamer being detained beyond the stipulated time either at the port of loading or at the port of discharge. The charterparty contained numerous other provisions imposing obligations on the charterers. The owners were aware at the time when the charterparty was signed that J. McK. & Co. were acting for other persons. In an action by the owners against J. McK. & Co. for demurrage at the port of discharge: *Held:* defts. having signed as agents were not liable as principals to pay demurrage, notwithstanding that they were described as charterers in the body of the charterparty.—UNIVERSAL STEAM NAVIGATION CO. *v.* MCKELVIE (J.) & CO., [1923] A. C. 492; 92 L. J. K. B. 647; 129 L. T. 395; 39 T. L. R. 480; 67 Sol. Jo. 593; 16 Asp. M. L. C. 184; 28 Com. Cas. 353, H. L.; *affg.* S. C. *sub nom.* ARIADNE S.S. CO., LTD. *v.* MCKELVIE (J.) & CO., [1922] 1 K. B. 518, C. A.

Annotation :—**Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2550. *Add. Annotation :*—**Mentd.** Arnour *v.* Leopold Walford (London), [1921] 3 K. B. 473.

2553. *Add. Annotation :*—**Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2563. *Add. Annotations :*—*As to* (1) **Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (3) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2564. *Add. Annotation :*—*As to* (1) **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2566. *Add. Annotations :*—**Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2567. *Add. Annotations :*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518. **Mentd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2571. *Add. Annotation :*—**Overd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 411.

2575. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

2577. *Add. Annotations :*—*As to* (1) **Refd.** Westacott *v.* Hahn, [1918] 1 K. B. 495. *Generally*, **Mentd.** Sutro *v.* Heilbut, Symons (1917), 14 Asp. M. L. C. 34; Rederi Akt. Acolus *v.* Hillas (1925), 42 T. L. R. 69.

2581. *Add. Annotation :*—*Generally*, **Mentd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2583. *Add. Annotations :*—*As to* (2) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492. *Generally*, **Mentd.** Palgrave, Brown *v.* Turid S.S., [1922] 1 A. C. 397.

2584. *Add. Annotation :* **Refd.** The Lizzie, [1919] P. 22.

2585. *Add. Annotation :*—*As to* (1) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2591. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2593. *Add. Annotation :*—*Generally*, **Mentd.** Rederiakt. Argonaut *v.* Hani, [1918] 2 K. B. 247.

2594. *Add. Annotation :*—*As to* (2) **Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2595. *Add. Annotations :*—**Distd.** Drughorn *v.* Rederiakt. Trans-Atlantic, [1919] A. C. 203. **Mentd.** Rederiakt. Argonaut *v.* Hani, [1918] 2 K. B. 247.

2597. *Add. Annotation :*—*As to* (1) **Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

PART X. SECT. 1, SUB-SECT. 1.—B. (c) i.

2591 iii. —— .)—Where a wife contracting for the sale of a house signed a document in her own name without any indication that she was acting as for her husband, & expressly d as owner to contract for to pltf. of the commission on the sale thereof:—*Held:* parol evidence was not admissible in an the husband to show that she was in fact acting as KATZMAN *v.* OWNAHOME REALTY CO., [1924] 1 D. L. R. 201; 25 O. W. N. 333.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—B. (c) ii.

2598 ii. —— —.)—Where a contract is into by an agent in his own & the terms thereof clearly liability the agent bound by the contract, of his intention, unless it can be shown by extrinsic evidence that there was an express agreement that the agent should not be liable & that the contract rendering him liable was so drawn by mistake.—CURRIE *v.* RURAL MUNICIPALITY OF WREFORD, NO. 250, & LASHER, [1918] 1 W. W. R. 316; 39 D. L. R. 516; 11 Sask. L. R. 22.—**CAN.**

—— *Sale of shares.*]—An investor purchased from a chartered accountant 150 shares in a co., paid the

2599. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2606. *Add. Annotations :*—**Distd.** Drughorn *v.* Rederiakt. Trans-Atlantic, [1919] A. C. 203. **Refd.** Rederiakt. Argonaut *v.* Hani, [1918] 2 K. B. 247.

2608. *Add. Annotation :—Generally*, **Mentd.** Barker *v.* Stickney, [1919] 1. K B. 121 ; The Lord Strathcona, [1925] P. 143.

2609. *Add. Citations :* —
ARGONAUT *v.* HANI, [1918] 2 K. B. 247 ; 87 L. J. K. B. 999 ; *sub nom.* ARGONAUT *v.* HANI, 14 Asp. M. L. C. 310.
Add. Annotation :—**Refd.** Drughorn *v.* Rederiaktiebolaget Trans-Atlantic, [1919] A. C. 203.

2609a. ——.]—The description in a charterparty of one of the contracting parties as " charterer " is not, of itself, designate him as the only person to fill that position.
An action for breach of charterparty was brought by persons claiming to be the undisclosed principals of a party described in the contract as " charterer," & objection was taken to the admission of evidence that pltfs. were in fact the charterers, on the ground that such evidence would contradict the written contract :—*Held :* the evidence was admissible.—DRUGHORN (F.), LTD. *v.* REDERIAKTIEBOLAGET TRANS-ATLANTIC, [1919] A. C. 203 ; 88 L. J. K. B. 233 ; 120 L. T. 70 ; 35 T. L. R. 73 ; 63 Sol. Jo. 99 ; 14 Asp. M. L. C. 400 ; 24 Com. Cas. 45, H. L. ; *affg.* S. C. *sub nom.* REDERI AKT. TRANS-ATLANTIC *v.* DRUGHORN, [1918] 1 K. B. 391, C. A.
Annotation :—**Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2610. *Add. Annotation :*—*As to* (2) **Refd.** Keen *v.* Mear (1920), 124 L. T. 19.

2613. *Add. Annotation :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

2620. *Add. Annotation* **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2634. Before this case, after " *See, now*, Bills of Exchange Act, 1882 (c. 61), s. 26," add " &, *generally*, BILLS OF EXCHANGE, Vol. VI., pp. 112–114."

2635. *Add. Annotations :*—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301 ; Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 111.

2639. *Add. Annotations :*—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148. **Mentd.** The Tervaete, [1922] P. 259 ; The Colorado, [1923] P. 102 ; The Sylvan Arrow, [1923] P. 220 ; The St. George, [1926] P. 217.

2655. *Add. Annotation :*—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301.

2658. *Add. Citation :—sub nom.* CREW *v.* PETIT, 3 Nev. & M. K. B. 456 ; 2 Nev. & M. M. C. 309.
Add. Annotation :—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301.

2664. *Add. Annotation :—As to* (1) **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2665. *Add. Annotation :*—**Consd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301.

2680. *Add. Annotations :*—**Mentd.** London General Omnibus Co. *v.* Pope (1922), 38 T. L. R. 270 ; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty [illegible] 95 L. J. P. C. 197.

2686. *Add. Annotations :*—**Refd.** Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226. **Mentd.** Weigall *v.* Runciman (1916), 85 L. J. K. B. 1187 ; Manbro Saccharine Co. *v.* Corn Products Co., [1919] 1 K. B. 198 ; Gould *v.* S. E. & C. Ry. Co., [1920] 2 K. B. 186 ; Johnson *v.* Taylor, [1920] A. C. 144 ; Wilson, Holgate *v.* Belgian Grain & Produce Co., [1920] 2 K. B. 1 ; Diamond Alkali Export Corpn. *v.* Bourgeois, [1921] 3 K. B. 443 ; Finn *v.* Shelton Iron, Steel & Coal Co. (1924), 131 L. T. 213 ; Hilton *v.* Westminster Bank (1926), 135 L. T. 358.

2695. *Add. Annotations :* —*As to* (1) **Overd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492 ; *Generally*, **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 111.

2726. *Add. Annotations :* —*As to* (2) **Refd.** Public Works Comrs. *v.* Pontypridd Masonic Hall Co., [1920] 2 K. B. 233. *Generally*, **Refd.** Rowland *v.* Air Council (1923), 39 T. L. R. [illegible]

2727. *Add. Annotation :* **Refd.** Public Works Comrs. *v.* Pontypridd Masonic Hall Co., [1920] 2 K. B. 233.

2728. *Add. Annotation :* **Mentd.** Public Works Comrs. *v.* Pontypridd Masonic Hall Co., [1920] 2 K. B. 233.

2729. *Add. Annotation :*— **Folld.** Hosier *v.* Derby (Earl), [1918] 2 K. B. 671.

2731. *Add. Annotation :* — **Refd.** Johnstone *v.* [illegible] lar, [illegible] A. C. 262.

2733a. — **For declaration as to meaning of contract.**]—By a contract made between pltfs. *company.*] — Deft. a [illegible] of a firm, H. & S., represented & warranted to pltf. that H. & S. Co., an [illegible] & that [illegible] accept a bill of exchange as [illegible] nt. Ho accepted a draft in the [illegible] of the co. & pltf. upon the faith of such assertion & warranty discounted the draft. H. & S. Co., Ltd., were not then an incorporated co. *Held :* deft., by his acceptance of the draft in the name of a non-existing corpn., warranted & represented that there was such a corpn. in existence & that he had authority to accept the draft for that co., & not having any such authority, he was personally liable for the amount of the draft & the costs incurred by pltf. in endeavouring to collect same from H. & S. Co., Ltd.—BANK OF NOVA SCOTIA *v.* HATFIELD (1920), 48 N. B. R. 13 ; 58 D. L. R. 136.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—C.

b i. —— ——.]—**A** clause in a

PART X. SECT. 1, SUB-SECT. 5.

2712 ii. —— *On behalf of unincorporated body.*]—An officer of a brotherhood lodge, an unincorporated body, who as such officer on behalf of the lodge borrows money & signs documents purporting to obligate it to repayment, is personally liable for repayment, having contracted for a principal who had no existence in law. —FINLAY *v.* BLACK, [1921] 2 W. W. R. 907.—**CAN.**

sn. *Bill of exchange accepted—In* [illegible] under [illegible]al purporting to bind a person as principal of one of the parties, cannot so bind him where the deed was not executed by him or executed in his name.—BATTLE CREEK TOASTED CORN FLAKE Co. *v.* [illegible] 1923] 1 D. L. R. 543.—

Constituent Assembly & established a Soviet Republic. Pltfs. having received no roubles in Russia, brought actions against the bankers to recover two sums of money, one of which was paid to them by pltfs. in the second action before Nov. 7, & the other by pltfs. in the first action on Nov. 9, at which date they did not know of the Bolshevist revolution. Pltfs. in both actions alleged that the bankers & the Russian Govt. were merely trustees for them, & the money having been paid under a contract, the consideration for which had entirely failed, they were entitled to recover. Pltfs. in the first action further contended that they had paid the money under a mistake of fact, & on that ground also they were entitled to recover it: —*Held:* (1) this money had been paid to the bank as agents for the Russian Govt., & the ct. would not order payment of it in the absence of that Govt. or its representatives; (2) the bank were entitled to keep the money in their hands, but must undertake not to part with it without notice to pltfs. & an order of the ct.—STEAM SAW MILLS CO. *v.* BARING BROTHERS & CO., ARCHANGEL SAW MILLS CO. *v.* BARING BROTHERS & CO., [1922] 1 Ch. 244; 91 L. J. Ch. 325; 126 L. T. 403; 38 T. L. R. 200; 66 Sol. Jo. 170, C. A.

2818. *Add. Annotations:*—**Consd.** Scottish Metropolitan Assce. *v.* Samuel, [1923] 1 K. B. 348. **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2826. *Add. Annotations:*—**Apld.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452. **Distd.** Steam Saw Mills Co. *v.* Baring, Archangel Saw Mills Co. *v.* Baring, [1922] 1 Ch. 244. **Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2828. *Add. Annotations:*—**Consd.** Scottish Metropolitan Assce. *v.* Samuel, [1923] 1 K. B. 348. **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2831. *Add. Annotation:*—**Consd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B.

2834. *Add. Annotation:*—*As to* (1) **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2839. *Add. Annotations:*—**Refd.** Marshall Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343. **Mentd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

2841. *Add. Annotations:*—**Refd.** Holt *v.* Markham, [1923] 1 K. B. 504; Jones *v.* Waring & Gillow, [1926] A. C. 670. **Mentd.** Chillingworth *v.* Esche, [1924] 1 Ch. 97.

2866. *Add. Annotation:*—**Followed.** Hosier *v.* Derby (Earl), [1918] 2 K. B. 671.

2867. *Add. Annotation:*—**Consd.** R. *v.* Income Tax Special Purposes Comrs., *Ex p.* Dr. Barnado's Homes National Incorporated Assocn., [1920] 1 K. B. 26.

2888. *Add. Annotations:*—**Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones *v.* Waring & Gillow, [1926] A. C. 670.

2899. *Add. Annotation:*—**Refd.** McCreagh *v.* Judd, [1923] W. N. 174.

2916. *Add. Annotation:*—*Generally*, **Mentd.** Jordy *v.* Vanderpump (1920), 64 Sol. Jo. 324.

2917. *Add. Annotation:*—**Mentd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

2924. *Add. Annotation:*—**Refd.** Belvedere Fish Guano Co. *v.* Rainham Chemical Works, Feldman & Partridge, Ind Coope *v.* Same, [1920] 2 K. B. 487.

2926. *Add. Annotation:*—**Consd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

2940. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67.

2943. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

2951. *Add. Annotation:*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626.

2953. *Add. Annotation:*—**Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2955. *Add. Annotation:*—**Mentd.** Glicksman *v.* Lancashire & General Assce., [1925] 2 K. B. 593.

PART X. SECT. 1, SUB-SECT. 8.—A. (b) ii.

2828 v. ——.]—If a bank pays money on a forged cheque to an innocent agent who at the time informs the bank that he is an agent & not a principal, & who before discovery of the forgery pays the money over in accordance with instructions received from his principal, the bank cannot recover the amount from such agent.—BANQUE D'HOCHELAGA *v.* MARSHALL, [1921] 2 W. W. R. 496; 31 Man. L. R. 242.—CAN.

PART X. SECT. 2, SUB-SECT. 2.—A. (b).

2918 i. *General rule.*]—Where a third party has suffered loss or injury he has no right of action against an personally unless the agent has guilty of a wrong or a breach of t WINTERMUTE *v.* MOULTON (1922), 65 D. L. R. 653.—CAN.

PART X. SECT. 2, SUB-SECT. 2.—B. (a).

2944 i. *Agent holding goods for principal—Absolute refusal to true owner.*]—A servant or agent can be sued for conversion of a chattel mtge. claimed by pltf. from the master or principal, where the refusal by such servant or agent to deliver it to the pltf. is absolute.—ADVANCE RUMELY THRESHER CO., INCORPORATED *v.* SERVICK, [1919] 2 W. W. R. 647; 12 Sask. L. R. 294.—CAN.

PART X. SECT. 2, SUB-SECT. 2.—B. (b).

2950 i. *Misrepresentations — Reckless.*]—Deft., as agent for the owner, induced pltf. to purchase a grocery [illegible]. Pltf. claimed damages from deft. on the ground that he had induced her to purchase the business by misrepresentations. The jury found that the representations made were untrue, that they had been made by deft. recklessly & without regard to their truth or falsehood, & that they had induced pltf. to purchase the business: —*Held:* the jury was justified in treating deft.'s statements as definite representations & in concluding that they were made to induce, & did induce, pltf. to buy the EASTERBROOK *v.* HOPKINS, N. Z. L. R. 428.—N.Z.

Part XI.—Duration and Termination of Agency.

3012. *Add. Annotation :*—**Mentd.** Hamilton *v.* Caldwell (1919), 88 L. J. P. C. 173.

3014. *Add. Annotation :* **Refd.** Payzu *v.* Saunders, [1919] 2 K. B. 581.

3017. *Add. Annotation :*—**Mentd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

3025. *Add. Annotation :* **Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60.

3027. *Add. Annotation :* —*As to* (1) **Folld.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

3027a. — — — — **Agent not interned.**]—In Aug. 1912, pltf., who was an Austrian subject residing in this country, made with defts., who were sugar brokers in L., a contract whereby for three years he was to have a share of the commissions & profits on certain business introduced by him & was to assist in defts.' general business in return for a share of the profits. War broke out between England & Austria in Aug. 1914, but pltf. was exempted from internment & was allowed to travel between his house & defts.' place of business. In Sept. 1914, defts. wrote to pltf. that in the circumstances the agreement was null & void, & gave him to understand that it was of no use for him to attempt to do business for them any longer. In an action for breach of the contract :—*Held :* the status of pltf. as the subject of an enemy State did not in the circumstances make the contract impossible of performance, & pltf. was entitled to damages.—SCHOSTALL *v.* JOHNSON (1919), 36 T. L. R. 75.

3028. *Add. Citations : affd.*, [1918] A. C. 239; 87 L. J. K. B. 116; 118 L. T. 126; 34 T. L. R. 206; 62 Sol. Jo. 200, H. L.

Add. Annotations :—*As to* (1) **Refd.** Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260. *As to* (2) **Distd.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304. **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Rodriguez *v.* Speyer, [1919] A. C. 59. *Generally*, **Mentd.** *Re* Munster, [1920] 1 Ch. 268; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 36.

3029. *Add. Annotations : As to* (2) **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331. *Generally*, **Mentd.** Rodriguez *v.* Speyer, [1919] A. C. 59; *Re* Sutherland Duchess, Becholf *v.* Bubna (1921), 65 Sol. Jo. 513.

3030. *Add. Annotation :* **Refd.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

3040a. — — — — By an underwriting contract dated Dec. 3, 1919, a syndicate agreed with a co. in consideration of a commission to subscribe for 150,000 of 350,000 shares to be offered to the public by a prospectus then about to be issued, & all allotments to the public were to be applied in relief of the syndicate's obligation to take up the 150,000 shares. By a sub-underwriting letter applt. agreed with the syndicate to subscribe 10,000 of the 150,000 shares underwritten by them & stated: "We now hand you application for the shares hereby underwritten by us together with cheque for £1,256, being deposit of 2*s.* 6*d.* per share." The letter also provided that applt. was only to be allotted & pay for so many of the 10,000 shares as should be his due proportion of the shares not taken up by the public, & that he was to receive a commission on the shares sub-underwritten by him. The letter also contained this clause: "This contract & our said application shall, notwithstanding any withdrawal on our part &/or any repudiation of our responsibility hereunder, or under the said application form, be sufficient to authorise & empower the directors to allot to us the above-mentioned shares & enter our name in the register of members in respect thereof." Applt. did not in fact sign or hand to the syndicate any written application to the co. for the 10,000 shares as contemplated by the sub-underwriting letter, but he handed to the syndicate the letter together with his cheque for £1,250 in their favour. On the issue of the prospectus only 55,000 shares were applied for by the public. On Dec. 12 the syndicate verbally applied in their own name & in the names of several sub-underwriters including applt. for an allotment of the total amount of the shares which they were bound to take up & paid with their own cheque for the total amount of the application money. On the same day the co. allotted to applt. 6,334, being his proportion of the 10,000 shares under his sub-underwriting letter. On Dec. 22, applt. wrote to the co. withdrawing his application for shares, meaning his sub-underwriting letter, but on Dec. 29 the co. sent him the usual formal notice of the allotment to him of 6,334 shares. On motion by applt. to rectify the register by removing his name therefrom as the holder of the 6,334 shares:—*Held :* the authority given by applt. to the syndicate to apply for shares was a continuing & irrevocable authority coupled with an interest which he was not entitled to withdraw.—*Re* OLYMPIC REINSURANCE CO., POLE'S CASE, [1920] 2 Ch. 311; 89 L. J. Ch. 511; 123 L. T. 786; 36 T. L. R. 691, C. A.

lotion :—**Mentd.** *Re* Greater Britain Insce. Corpn. *v.* Brockdorff (1920), 124 L. T. 194.

See, generally, COMPANIES, Vol. IX., pp. 182, *et seq.*

3041 *Add. Annotation :*—**Mentd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

3057 *Add. Annotations :*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240; Maskell *v.* Hill, [1921] 3 K. B. 157. **Mentd.** Cohen *v.* Hill, [1922] 2 K. B. 37.

PART XI. SECT. 2, SUB-SECT. 1.—A.

2965 vii. — — —.]—In an ordinary house agent's agreement the principal may revoke the agent's authority at time before the agent has fully was authorised to do.—TYNAN *v.* A'BECKETT, [1923] V. L. R. 412.—**AUS.**

vii. — — —.; of agency can in the of a term, express or implied to the contrary, be terminated at the will of either party.—POLLARD *v.* GIBSON, 4 D. L. R. 354; 33 O. L. R. 54 O. L. R. —**CAN.**

PART XI. SECT. 3, SUB-SECT. 1.

sp. *Death of principal—Power to convey land.*]—*Held :* under a power of attorney executed by M., who died in 1919, her attorney could execute a valid transfer of her land, after her death.—*Re* MCCARTY (1920), 53 D. L. R. 249; 47 O. L. R. 285.—**CAN.**

AGRICULTURE.

NOTE.—The Act now in force in England is "Agricultural Holdings Act, 1923 (c. 9)," herein referred to as A. H. Act, 1923. The Act repealed (*inter alia*) A. H. Act of 1908 (c. 28).

Owing to the statutory extensions in the law since the original volume was published the following new sub-sections have been added to Part V., Sect. 3:—

SUB-SECT. 1*a*.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING (*see* p. 73, *post*).

SUB-SECT. 3*a*.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION (*see* p. 75, *post*).

SUB-SECT. 3*b*.—ASCERTAINMENT OF COMPENSATION (*see* p. 75, *post*).

Part I.—Definitions.

Add the following cross-reference:—"Market garden.] —*See* Nos. 267b, 267c

Part II.—Commencement, Duration, and Termination of Agricultural Tenancy.

4. *Add. Annotations:*—**Refd.** Croft *v.* Blay, [1919] 1 Ch. 277; Simmons *v.* Crossley, [1922] 2 K. B. 95.

19. *Add. Annotation:*—*As to* (2) **Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

24a. Agriculture Act, 1920 (c. 76), s. 28 To what tenancies applicable.]—The above sect., which renders a notice to quit a holding invalid if it purports to determine the tenancy before the expiration of twelve months from the end of the then current year of tenancy, applies not only to the case of a yearly tenancy but to all contracts of tenancy in which a notice to quit is required to determine the tenancy, including a lease for twenty-one years with an option to party to determine it on six months' at the end of the first seven or fourteen years of the term. A notice to quit includes a notice to determine the tenancy. EDELL *v.* DULIEU, [1924] A. C. 38; 93 L. J. K. B. 286; 130 L. T. 390; 40 T. L. R. 84; 68 Sol. Jo. 183, H. L.

29a. Termination of tenancy Whether matter for arbitrator—Under Agricultural Holdings Act, 1923 (c. 9), s. 16.]—A question whether a tenancy has terminated or not is not a "question or difference arising out of the termination of the tenancy" within the above sect.—SIMPSON *v.* BATEY, [1924] 2 K. B. 666; 93 L. J. K. B. 919; 131 L. T. 724; 68 Sol. Jo. 754. C. A.

Annotations:—**Expld.** R. *v.* Powell, *Ex p.* Camden, [1925] 1 K. B. 611. **Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** Harrison *v.* Ridgway (1925), 133 L. T. 238.

29b. *S. P.* R. *v.* POWELL, *Ex p.* CAMDEN (MARQUIS), [1925] 1 K. B. 611; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 61; 41 T. L. R. 277; 23 L. G. R. 391, D. C.

Annotations: **Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** Harrison *v.* Ridgway (1925), 133 L. T. 238.

29c. Whether condition precedent to arbitration Under Agricultural Holdings Act, 1923 (c. 9), s. 16.]—The words "arising out of the termination of the tenancy of the holding" in the above sect. apply to the whole of the preceding part of sub-sect. 1 of the sect., & the determination of the tenancy is a condition precedent to the right to demand the appointment of an arbitrator. R. *v.* POWELL, *Ex p.* CAMDEN (MARQUIS), [1925] 1 K. B. 611; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.

Annotations: **Folld.** Harrison *v.* Ridgway (1925), 133 L. T. 238. **Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

29d. *S. P.* HARRISON *v.* RIDGWAY (1925), 133 L. T. 238; 23 L. G. R. 431, D. C.

Annotations: **Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

30a. Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919 (c. 63) Application of Act.]—Sect. 1 of the above Act, rendering null & void notices to quit in the event of sales, applies (1) where the sale is a sub-sale of an interest under a previous contract; (2) to equitable as well as legal owners; (3) where notice is by one person & sale by another; (4) to the whole holding, although

PART II. SECT. 3, SUB-SECT. 2.—A.

a1. *Joint tenants in possession by tacit relocation—Notice to terminate given by one tenant.]*—Two brothers were partners & joint tenants under a lease renewable by tacit relocation. The elder brother, the active partner, gave notice in writing to the landlord that he intended to leave the farm. Subsequently they declined to remove from the farm, on the ground that the notice being in the name of one of the joint tenants only, was insufficient to vent renewal of the lease by tacit relocation:—*Held*: (1) the notice sary, under A. H. (Scotland) Act, 1908 (c. 64), s. 18 (1), to prevent tacit relocation, might be given by a duly authorised agent for the tenant; (2) as the evidence showed that the elder brother had sufficient authority to terminate the lease on behalf of the partners, the notice given by him was effectual to prevent tacit relocation, although the fact that he was acting both for himself & as agent for his brother did not appear *ex facie* of the notice.—GRAHAM *v.* STIRLING, [1922] S. C. 96.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 6.

29a1. *Termination of tenancy—Whether matter for arbitrator—Under Agricultural Holdings (Scotland) Act, 1908 (c. 64), s. 15.]*—*Held*: not one of the matters remitted to the exclusive jurisdiction of the arbitrator.—DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES *v.* LOVE'S TRUSTEES, [1923] S. C. 199. **SCOT.**

8a. *Lessor selling farm under power in lease Purchaser put in possession Sale not completed.]*—*Held*: having sold the farm, & put pursuer in possession to the knowledge of defr., the latter might conclude that pltf. had exercised the right to sell given the lessor under the lease & that his lease was therefore at an end; pltf.'s allowing the purchaser to draw from the agreement to the lease.—RUSK *v.* MILOS,

the sale is only as to a part.—ROBINSON *v.* NESBITT (1920), 64 Sol. Jo. 201.

:—*Generally*, **Apprvd.** Blay *v.* Dadswell, [1922] 1 K. B. 632.

30b. **Contract for sale after passing of Act—Notice by one person—Sale by another.**]—ROBINSON *v.* NESBITT, No. 30a, *ante*.

30c. —— —— **Sale requiring consent of several parties—Consent of some parties given after passing of Act.**]—A contract to sell to pltf. land under Church Building Act, 1839 (c. 49), was entered into before the passing of the Act of 1919, by several, but not all, of the persons whose consent was necessary to the sale. At the time of the contract deft. was in occupation of the land as yearly tenant, but was under a notice to quit which had been served upon him by the vendors. All the persons whose consents were necessary for the sale subsequently joined in the conveyance to pltf., which was executed after the passing of the Act of 1919:—*Held:* the contract of sale was entered into with pltf. before the passing of the Act of 1919, & the notice to quit, therefore, was valid, & pltf. was entitled to possession.—BROOKS *v.* BLOOR (1920), 90 L. J. K. B. 577; 124 L. T. 316; 36 T. L. R. 826; 64 Sol. Jo. 685, D. C.

30d. —— —— **Sale to tenant.**]—(1) Sect. 1 of the above Act applies not only to contracts of sale of holdings to third persons, but also to contracts of sale to the tenants themselves. (2) Agriculture Act, 1920 (c. 76), s. 29 & sched. 1, are amending & not merely declaratory, & are not retrospective as to notices which would, if valid, have expired before the commencement of that Act.—BLAY *v.* DADSWELL, [1922] 1 K. B. 632; 91 L. J. K. B. 739; 127 L. T. 6; 66 Sol. Jo. 439; 20 L. G. R. 221; 86 J. P. Jo. 65, C. A.

30e. **Agricultural Holdings Act, 1923 (c. 9)—Farm held under two landlords—Notice to quit given by both—Contract for sale by one for part of farm.**]—On May 20, 1912, T. let a farm to C. from year to year from Oct. 11, 1911, at an annual rent of £150. On Dec. 23, 1914, T. conveyed about half the farm to pltfs., subject to & with the benefit of the tenancy agreement. T. died on Jan. 4, 1919, & C. continued to pay the whole rent to her exors., as he had since the conveyance paid it to T. After Oct. 11, 1922, the rent fell into arrear. By a notice to quit dated Oct. 10, 1923, the agents of T.'s exors. & the agent of pltfs. jointly gave C. notice to quit the whole holding on Oct. 11, 1924. By an agreement dated Oct. 1, 1924, T.'s exors. agreed to sell their part of the farm to C., & it was conveyed to him on Apr. 17, 1925. C. refused to give up possession to pltfs. of their part of the holding, contending that under sect. 26 of the above Act the contract by T.'s exors. to sell to him rendered the notice to quit null & void. Pltfs. brought an action for a declaration that the notice to quit was effective, & to recover possession of their land:—*Held:* as the contract to sell a part was not made by the persons who gave notice to quit the entire holding, but only by some of them, sect. 26 of the above Act did not apply; the tenancy had been duly determined as regards pltfs.' land, & pltfs. were entitled to the declaration which they asked & to an order for possession of their land.—ROCHESTER & CHATHAM JOINT SEWERAGE BOARD *v.* CLINCH, [1925] Ch. 753; 95 L. J. Ch. 49; 134 L. T. 130.

Part III.—Covenants and Customs of the Country.

32. *Add. Annotation:*—**Refd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

36. *Add. Annotations:*—**Apld.** Cheater *v.* Cater, [1918] 1 K. B. 247. **Mentd.** Michael *v.* Phillips (1923), 130 L. T. 142; Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

39. *Add. Annotation:*—**Mentd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

56a. —— —— **Grass land laid down by tenant.**]—By a tenancy agreement made in 1894 the trustees of an estate, of which pltf. was the present tenant for life in possession, agreed to let to deft. certain farm lands & house buildings comprising 138 acres more or less, as described in a schedule attached to the agreement, on a yearly tenancy, at the rent of £48. The tenant covenanted to manage & cultivate the land in a husbandlike manner, & that he would not plough or otherwise break up "any grass land" without the consent of the landlord. In the schedule to the agreement the premises were described consisting of 130 acres 1 r. 31 p. of arable & 8 acres of grass land. In 1898 the tenant laid down 40 acres more to permanent grass. On notice being given to him to determine the tenancy on Sept. 29, 1919, he claimed the right to plough up this 40 acres of permanent grass which had been arable at the commencement of his tenancy. In an action by pltf. to restrain him from so doing in breach of his covenants an *interim* order was made granting the injunction on the usual undertaking as to damages. Deft. counterclaimed for damages by reason of the *interim* order:—*Held:* (1) on the true construction of the agreement, the covenant not to plough up any grass land was not restricted to the 8 acres of grass at the date of the demise but extended to the grass land in dispute & pltf. was entitled to the relief claimed; (2) on the evidence, the proposed dealing with the land would have been a breach of the covenant to cultivate in a husbandlike manner; (3) deft. had suffered no damage from the granting of the *interim* injunction.—CLARKE-

W. W. R. 1021; 11 Sask. L. R. 271; 42 D. L. R. 782.—**CAN.**

sb. *Contract for share farming—No provision as to duration.*]—Deft. cropped pltf.'s land on shares in 1917, & in summer sold it. No time had agreed to do so again. Pltf. was to sell the land, as deft. knew, l for deft. to give up

Held: deft. was entitled to such occupation as was necessary to put in & harvest the crop for 1918.—r. LYONS, [1919] 3 W. W. R. ; 48 D. L. R. 365.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—B.

sc. *Covenant to rid land of weeds—Breach—Relief from forfeiture.*]—Relief was granted due to exceptional weather conditions, etc.—WARNER v [1919] 2 W. W. R. 94.—**CAN.**

JERVOISE *v.* SCUTT, [1920] 1 Ch. 382; 89 L. J. Ch. 218; 122 L. T. 581.

68. *Add. Annotations :*—**Consd.** Cole *v.* Kelly, [1920] 2 K. B. 106. **Mentd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

69. For "that relation existing between him & the other tenants in common" read "that relation not existing between him & the other tenants in common."

80. *Add. Annotation :*—**Mentd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

103. *Add. Annotation :*—**Refd.** Melzak *v.* Lilienfeld, [1926] Ch. 480.

106. *Add. Annotation :—As to* (1) **Refd.** Clarke-Jervoise *v.* Scutt, [1920] 1 Ch. 382.

117. *Add. Annotation :*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

117a. —— **Grass land laid down by tenant.**]—CLARKE-JERVOISE *v.* SCUTT, No. 56a, *ante*.

125. *Add. Annotations :*—**Mentd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

140. *Add. Annotations :*—**Refd.** Raikes *v.* Ogle, [1921] 1 K. B. 576; Brakspear *v.* Barton, [1924] 2 K. B. 88.

147. *Add. Annotation :—Generally*, **Mentd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

164a. Against sub-letting—Letting of grass keep in last year of tenancy—Agistment.]—Where the tenant of a farm covenants not to underlet or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep, *i.e.* growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country. *Semble :* agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—RICHARDS *v.* DAVIES, [1921] 1 Ch 90; 89 L. J. Ch. 601; 124 L. T. 238; 65 Sol. Jo. 44.

SUB-SECT. 16.—OTHER MATTERS (Vol. II., p. 28).

Add the following case :—

166a. Tenant to perform "team-work" for landlord.]—An agreement for an agricultural lease contained a stipulation that the tenant should perform each year for the landlord, "at the rate of one day's team-work with two horses & one proper person for every £50 of rent when required, except at hay & corn harvest, without being paid for the same." In ejectment for a forfeiture :—*Held :* (1) the work thus to be performed meant any work for which teams are generally used, & therefore included drawing coals to B. Palace; (2) the tenant was not bound to supply a car or other vehicle for the purpose of the work. MARLBOROUGH (DUKE) *v.* OSBORN (1864), 5 B. & S. 67; 3 New Rep. 568; 33 L. J. Q. B. 148; 10 L. T. 28; 28 J. P. 532; 12 W. R. 418; 122 E. R. 758.

173. *Add. Annotation :* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

194. *Add. Annotations :* **Consd** Bradbury *v.* Grimble (1920), 124 L. T. 189. **Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

Part V.—Compensation.

226. *Add. Annotation :*—**Mentd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

226a. —— ——.]—Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom of statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment. *Re* WADSLEY, BETTINSON'S REPRESENTATIVE *v.* TRUSTEE (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76.

229. *Add. Annotations :*—**Refd.** Bradshaw *v.* Bird, D. L. R. 452; 17 Alta. L. R. [1922] 1 W. W. R. 70.—**CAN.**

● **iii.** —— *& to break land—Breach Measure of damages.*]—The measure of damages is the value of the additional work necessary to do the summe fallowing & breaking.—TOCHER JOHNSON (1922), 68 D. L. R. 76 32 Man. L. R. 356; [1922] 2 W. W. R. 616.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—B.

● **i.** —— ——.]—Applt. alleged that he was prevented *from* summer-fallowing by an excessive quantity of water being on the land :—*Held* resp. was entitled to $133 damages.—HUNT *v.* WEIBERG (1921), 67 D. L. R. 777.—**CAN.**

● **ii.** —— *Or to crop—Breach.*]—A lessee agreed each year either to crop or summer-fallow every portion of the demised premises brought under cultivation. The lessee failed to crop or summer-fallow 30 acres brought under cultivation, owing to the land being covered with water. The lessor gave evidence that a crop of green feed could have been grown on the 30 acres :—*Held :* if the lessee could not, or did not choose to crop, he must summer-fallow; "crop" within the covenant in the lease included a crop.—STEFFES *v.* SMITH (1921),

PART III. SECT. 2, SUB-SECT. 4.

sd. *Miscropping — Claim for damduring tenancy—How determined.*] ultural Holdings (Scotland) Act, 1923 (c. 10), s. 15 (1), is, except as regards disputes relating to the construction of the lease, applicable only to disputes arising out of the termination of the tenancy; & a claim for damages for miscropping made by a landlord against a tenant under s. 35 (2) during the currency of the lease cannot be referred to arbn., but falls to be determined by the ct. in an ordinary action.—WILKINSON *v.* BARNETT, [1925] S. C. 621. **SCOT.**

PART III. SECT. 2, SUB-SECT. 16.

se. *Covenant to deliver to landlord share of crop or pay its value—Option of tenant—Time for exercising.*]—The lessee of a farm agreed to deliver to the lessor a fixed share of the crops, or pay the value thereof, all crops to remain the property of the lessor until the settlement of accounts at the termination of the contract :—*Held :* the time for the exercise of the option was upon the settlement.

561.—**CAN.**

PART V. SECT. 3, SUB-SECT.

, *Purchaser.*]—An
with entry to the purchaser

3 K. B. 144; Dale *v.* Hatfield Chase Corpn., [1922] 2 K. B. 282.

229a. Incoming tenant agreeing to repay compensation paid by landlord—Action by landlord on agreement—When cause of action arises.]—By an agreement dated Dec. 24, 1915, made under seal, pltfs. let to deft. a small-holding from year to year from Feb. 2, 1916, at a rent of £132 10*s.* a year payable by half-yearly payments on Feb. 2, & Aug. 2, each year. The tenant agreed "to pay on entry any allowance or compensation which may be due from the council to the outgoing tenant in respect of feeding stuffs or manures or any improvements mentioned in A. H. Act, 1908, Sched. 1, Part III." Deft. entered into occupation of the small-holding on Feb. 2, 1916. At that date the amount of the compensation payable to the outgoing tenant had not been fixed, & it was not until Feb. 11, 1918, that the amount of compensation was agreed to. It was then agreed that the council should pay the outgoing tenant £30 17*s.* 6*d.*, & that sum was paid by the council to the outgoing tenant on Mar. 17, 1921. On Jan. 13, 1923, pltf. council brought an action in the county ct. claiming to recover from deft. the sum of £30 17*s.* 6*d.* under the agreement of Dec. 24, 1915. Deft. pleaded that pltfs.' cause of action had arisen on Feb. 2, 1916, the date of his entry on the holding, & that therefore the claim was barred by Stat. Limitations, s. 3, because the action was not brought "within six years next after the cause of such action or suit": *Held:* pltfs.' cause of action against deft. did not arise on Feb. 2, 1916, when deft. entered on the holding but only on Feb. 11, 1918, when the amount of the compensation was ascertained by agreement; therefore the time only began to run from Feb. 11, 1918, & the action was not barred.—CHESHIRE COUNTY COUNCIL *v.* HOPLEY (1923), 130 L. T. 123; 21 L. G. R. 524.

Annotation **Refd.** Cuyzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269.

232. *Add. Annotation:* **Consd.** *Re* Russell & Harding (1922), 128 L. T. 476.

233. *Add. Annotations:* **Refd.** *Re* Masters & Duveen, [1923] 2 K. B. 729. **Mentd.** Bowling *v.* Camp (1922), 128 L. T. 342.

234. *Add. Annotation:—Generally*, **Mentd.** Premier Dairies *v.* Garlick, [1920] 2 Ch. 17.

237a. Agricultural Holdings Act, 1908, s. 1 (1)—Improvements required to be made under tenancy agreement—Agreement made before January 1, 1921.]—A contract of tenancy made in 1906 for a term of fifteen years contained an agreement by the tenant to plant half the land with fruit trees & fruit bushes within the first four years, & the rest with fruit trees within the first ten years of letting. The tenant planted trees & bushes in accordance with the agreement. At the end of the tenancy he claimed compensation for the improvement thus made:—*Held:* he was not entitled to compensation, the improvement being one which he was required to make by the terms of his tenancy & the contract of tenancy having been made before Jan. 1, 1921.—HUCKELL *v.* SAINTEY, [1923] 1 K. B. 150; 92 L. J. K. B. 313; 128 L. T. 299, C. A.

239. *Add. Annotation:—As to* (2) **Refd.** Premier Dairies *v.* Garlick, [1920] 2 Ch. 17.

242a. Agricultural Holdings Act, 1908—Attempted exclusion of statutory compensation.]—*Re* MASTERS & DUVEEN, No. 267a, *post*.

252. *Add. Annotation:*—**Mentd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

255. *Add. Annotations:*—**Consd.** Simpson *v.* Crowle, [1921] 3 K. B. 243; Smythe *v.* Wiles, [1921] 2 K. B. 66. **Refd.** St. Magnus, etc., Parochial Church Council *v.* London Diocese (Chancellor), [1923] P. 38. **Mentd.** Hunter *v.* Stadtishe Hochseefischerei Gemeinnutzige Gesellschaft (1925), 133 L. T. 488.

259. *Add. Annotations:*—**Apld.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Ellesmere *v.* I. R. Comrs. (1918), 88 L. J. K. B. 337; Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282.

264. After this case add as follows:—

See, further, Sect. 3, sub-sect. 3*b*, *post*.

922, & on the
an exist lease of the lands

m. Less than two months later, he intimated a claim for compensation for improvements to the purchaser, & applied to the Board of Agriculture, who appointed an arbiter: —*Held:* the "landlord" liable to make payment of compensation to the tenant was the selling owner, in respect that he alone was the "landlord" at the termination of the tenancy when the tenant quitted the holding & the claim for compensation emerged, & the obligation so incurred did not transmit to the purchaser, & interdict against the arbn. proceedings granted. —WARDELL *v.* HOWAT, [1925] S. C. 481.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—D.

237 viii a. ——— ——— ——— .]—Where a landlord abstains from terminating a tenancy, he gives no benefit to the tenant under s. 1 (2) (*a*) of the above Act where it is not proved that the tenancy was continued in consideration of the tenant executing the improvement.—MACKENZIE *v.* MACGILLIVRAY, [1921] S. C. 722; 58 Sc. L. R. 488.—**SCOT.**

237 ix. ——— *Tenant laying down pasture.*]—The fact that an arbiter finds that in laying down temporary pasture the tenant is complying with the rules of good husbandry, which he was bound to observe, does not preclude him from also finding that the temporary pasture is an improvement for which the tenant is entitled to compensation under the above Act.—MACKENZIE *v.* MACGILLIVRAY, [1921] S. C. 722; 58 Sc. L. R. 488.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—G.

sf. *Agricultural Holdings (Scotland) Act*, 1908 (*c.* 64)—*Sufficiency of notice.*]—A tenant who has, before the determination of his tenancy, made it clear to the landlord that he proposes to claim for unexhausted manures & feeding stuffs, but without furnishing the particulars or amounts, has sufficiently complied with s. 6 (2) of the above Act.—ROGER *v.* HUTCHESON, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—H. (b).

sg. *What questions arbitrator may determine—Termination of tenancy—Agricultural Holdings (Scotland) Act*, 1923 (*c.* 10), *s.* 15.]—In a note of suspension & interdict brought by the landlords of a farm, craving the ct. to interdict proceedings in an arbn. under the above Act upon a claim by the tenant, who had vacated the farm in favour of a new occupier, for compensation for improvements, the complainers maintained that the tenancy had not terminated, & that the appointment of an arbiter under the Act was illegal:—*Held:* the question of the claimant's title to present a claim was not one of the matters remitted by the Act to the exclusive jurisdiction of the arbiter, but was a question precedent to the existence of a statutory claim, & the ct. had jurisdiction to entertain the action of interdict.—DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES *v.* ESSLEMONT, [1925] S. C. 199.—**SCOT.**

sk. *Form of arbitration—Arbitration between outgoing & incoming tenants—Agricultural Holdings (Scotland) Act*, 1908 (*c.* 64).]—There is nothing illegal in the outgoing & incoming tenants entering into an agreement for a common law arbn.—ROGER *v.* HUTCHESON, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

257 ii. ——— ——— ———.]—Charges for preparing & adjusting a special fall to be dealt with by the arbiter.—THOMSON *v.* GALLOWAY, [1919] S. C. 611; 56 Sc. L. R. 521. —**SCOT.**

SUB-SECT. 1*a*.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING.

A. Compensation to Tenant.

See A. H. Act, 1923, s. 9.

B. Compensation to Landlord.

See A. H. Act, 1923, s. 10.

264a. Notice of claim—Time for giving—Agriculture Act, 1920 (c. 76).]—*Held:* the meaning of sect. 19 of the above Act taken as a whole was that the landlord should have a right of compensation for deterioration under the sect. if he gave a notice before the termination of the tenancy & not otherwise; but if he had a right under contract to claim for deterioration apart from the sect., nothing in the sect. should interfere with that right.

A tenant held a farm as a yearly tenant under the landlord upon the terms, as the arbitrator found, of an agreement in writing under which the father of the tenant had originally held the farm. On Aug. 20, 1920, the landlord served a notice to quit upon the tenant, which expired as to the land, other than the boozy pasture, on Feb. 2, 1922. The tenant gave up possession of the land except the boozy pasture, the tenancy of which did not expire until May 1, 1922, upon that date. On Mar. 28, 1922, the landlord gave notice of & particulars of a counterclaim against the tenant for waste wrongly committed or permitted by the tenant & for breach of contract or otherwise, whereby he claimed for neglect in the care of hedges & ditches on the land & dirty land:—*Held:* (1) the landlord's claim was not barred by sect. 19 of the above Act; (2) the boozy pasture & the rest of the farm were held under one contract of tenancy; the contract did not finally cease under sect. 10 (7) of the above Act until May 1, 1922, the date of the termination of the boozy tenancy, & the landlord's notice was therefore in time.—*Re* ARDEN & RUTTER, [1923] 2 K. B. 865; 130 L. T. 51; *sub nom.* ARDEN *v.* RUTTER, 92 L. J. K. B. 891, C. A.

Annotation:—As to (1) **Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

265a. —— Right to compensation—Tenant holding over after notice to quit.]—A tenancy was determined by notice to quit on a certain day. The tenant remained on in possession for about nine months, & was finally ejected. Two days before his ejectment he furnished details of his claim for compensation:—*Held:* the tenant, from the date when his notice expired, was not holding under a contract of tenancy, & the land which he persisted in occupying unlawfully was not a holding within sect. 11 of the above Act, & he, therefore, was not within the benefit of the Act.—CAVE *v.* PAGE (1923), 67 Sol. Jo. 659, C. A.

265b. —— Liability to pay compensation—"Landlord"—Purchaser entitled to rents—Purchase not completed till after claim.]—Certain landowners let a farm to tenants. In 1917 they gave notice to the tenants to quit at Michaelmas, 1918, with a view to the sale of the farm. In Oct. 1917, they agreed to sell the farm to a purchaser. On July 5, 1918, the tenants gave to the purchaser, who was then entitled to the rents & profits, notice in writing under sect. 1 (1) of the Act of 1914 of their intention to claim compensation in terms of sect. 11 of the Act of 1908. On July 18, 1918, the sale of the farm was completed:—*Held:* (1) the purchaser was the "landlord" within the Acts; (2) the notice of intention to claim compensation was rightly given to him; (3) he was liable to pay compensation.

BRADSHAW *v.* BIRD, [1920] 3 K. B. 111; 90 L. J. K. B. 221; 123 L. T. 703, C. A.

Annotation: Generally. **Consd.** Dale *v.* Hatfield Chase Corpn., [1922] 2 K. B. 282; Toombs *v.* Turvey 93 L. J. K. B. 785.

265c. —— —— —— —— Person entitled to rents at end of tenancy.]—(1) Where the tenant of an agricultural holding, who has been disturbed in his tenancy, becomes entitled under sect. 11 of the above Act to compensation for loss in connection with the sale or removal of his household goods, implements, or stock on the condition, among others, of giving to the landlord a reasonable opportunity of making a valuation of such goods, etc., the question whether he has given such a reasonable opportunity is in each case a question of fact depending on the circumstances. The mere lapse of an interval of several months between notice of intention to claim compensation & sale or removal is not of itself sufficient to satisfy the condition.

(2) Where the tenant of an agricultural holding has given notice to his landlord under sect. 11, proviso (*b*), of his intention to claim compensation for disturbance, & the landlord before the appointment of an arbitrator under that sect. assigns the reversion, the person who is liable to pay such compensation as may be awarded is the person who is entitled to receive the rents at the termination of the tenancy, & the notice of intention to claim so given to the original landlord will enure for the benefit of the tenant as against such last-named person.

(3) Assuming sect. 48 (2) of the above Act to apply to proceedings for compensation for disturbance as well as for improvements, the commencement of the "proceedings" is not the service of notice of intention to claim compensation, but the appointment of the arbitrator.—DALE *v.* HATFIELD CHASE CORPN., [1922] 2 K. B. 282; 92 L. J. K. B. 237;

PART V. SECT. 3, SUB-SECT. 2.

sl. *Agricultural Holdings (S Act*, 1908 (*c.* 61)—*What questions arbitrator must determine.*]—Under s. 19 of the above Act it falls to the arbiter to determine questions connected with the time & validity of notices to quit & notices to claim compensation.—COWDRAY *v.* FERRIES, [1919] S. C. (H. L.) 27.—**SCOT.**

sm. *Agriculture Act*, 1920 (*c.* 76), *s.* 10—*Claim exceeding one year's rent—Damage proved less than one year's rent.*]—*Held:* the tenant was still titled to SPEIRS, [c 272. **SCOT.**

sn. *as from error in grain crop.*]—Under the le of a farm the landlord took over the crop of grain from the tenant at fiars prices, the of the growing cro d by arbn. After t it was found that the quantity had bee mated by the arbiters. The tenant claimed, under the above sect., as compensation for loss in connection with the sale of the farm prod ce, a sum representing the etween the price he had was irectly attributable the the holding," b had an error of he arbiters.— v. BOARD O. AGRICULTURE rom SCOTLAND, [1925] S. C. 61 **SCOT.**

, 10), *s.* 12 (6)—*Ref to take over stock.* Claim for The tenant of a farm r

128 L. T. 194; 87 J. P. 11; 20 L. G. R. 765, C. A.

Annotation:—*As to* (2 Consd. Tombs *v.* Turvey (1923), 93 L. J. K. B. 785.

266a. —— **Notice of claim—To whom given—Purchaser entitled to rents.**]—BRADSHAW *v.* BIRD, No. 265b, *ante*.

266b. —— —— —— **Landlord—Subsequent alienation of reversion.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante*.

266c. —— **Reasonable opportunity of making valuation—What amounts to.**]—DALE *v.* CHASE CORPN., No. 265c, *ante*.

266d. **Commencement of "proceedings"—What amounts to.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante*.

266e. **Agriculture Act, 1920 (c. 76)—Right to compensation—Withdrawal of notice to quit—What amounts to.**]—In Sept. 1920, a landlord gave to the tenant notice to quit his tenancy of a farm for which he was paying a yearly rental of £506 2*s*. On Dec. 31, 1920, the landlord wrote to the tenant: "I have received an offer of £670 *per annum* for your holding. If you choose to give me the same, you are most welcome to continue the tenancy":—*Held:* having regard to sect. 10 of the above Act, the letter of Dec. 31, 1920, did not constitute an offer in writing to withdraw the notice to quit within the proviso to sect. 10 (1) of that Act.—*In re* PERRETT BENNETT-STANFORD, [1922] 2 K. B. 592; 91 L. J. K. B. 930; 128 L. T. 57; 38 T. L. R. 819; *sed* PERRETT *v.* BENNETT-STANFORD, 66 Sol. Jo. 680, C. A.

266f. —— —— **Ejectment proceedings following notice to quit.**]—The landlord of a farm served on the tenant a notice to quit on Mar. 25, 1923. Owing to the illness of his wife, the tenant did not quit the farmhouse at the expiry of the notice, but he quitted the land, save as under the custom of the country, immediately after the expiry of the notice. Ejectment proceedings were brought by the landlord & judgment was obtained by default of appearance. On being served with the notice to quit, the tenant duly served on the landlord a notice of intention to claim compensation for disturbance under sect. 10 of the above Act:—*Held:* if the tenant was ejected, the ejectment was in consequence of the notice to quit, &, therefore, the tenant had quitted the farm in consequence of the notice to quit terminating the tenancy, & the tenant was accordingly entitled to compensation under sect. 10 of the Act.—MILLS *v.* ROSE (1923), 68 Sol. Jo. 420, C. A.

—— —— —— **Necessity for proof of loss or expense—Entire holding in occupation of sub-tenants.**]—The effect of sect. 10 (6) of the above Act is that as a condition precedent to his right to compensation for disturbance a tenant must prove that he has incurred some loss or some expense of the kind indicated in the sub-sect.; that on proof of that he is entitled as a minimum to one year's rent of the holding; but that unless he proves some loss or some expense of the kind indicated he does not bring himself within sub-sect. 6 & is not entitled to compensation. Therefore where a lease of a holding under the Act was duly determined by notice to quit & the holding was entirely in the occupation of sub-tenants whose sub-tenancies terminated without notice on the termination of the lease, & the lessee did not sell or remove any household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding:—*Held:* he was not entitled to compensation for disturbance under sect. 10.—AGRICULTURE & FISHERIES MINISTER *v.* DEAN, [1924] 1 K. B. 851; 93 L. J. K. B. 374; 130 L. T. 709; 40 T. L. R. 285; 68 Sol. Jo. 401, C. A.

Annotation:—**Consd.** Westlake *v.* Page, [1926] 1 K. B. 298.

266h. —— **Notice of claim—Time for giving—"Termination of tenancy"—Tenancy of different parts of holding expiring at different times.**]—A landlord let a farm, according to the custom of the country, upon a yearly tenancy on the terms that the tenant should enter into occupation of the main portion of the land on Apr. 6, & of the farmhouse, farm buildings, & the remainder of the land on May 13, & that "on the termination of the tenancy" he should give up possession of the different portions of the farm on the respective dates, there being one rent reserved for the whole farm:—*Held:* the "termination of the tenancy" for the purposes of sect. 10 (7) of the above Act took place on May 13, notwithstanding that the main portion of the premises had to be surrendered at the earlier date.—*Semble:* the proviso to sect. 18 (2) of the above Act applies only to a case where the tenant has been allowed by a landlord to remain on, after the cesser of the agreement of tenancy, under a new agreement.—SWINBURNE *v.* ANDREWS, [1923] 2 K. B. 483; 92 L. J. K. B. 889; 129 L. T. 650; 39 T. L. R. 545; 67 Sol. Jo. 726, C. A.

Annotation:—**Consd.** *Re* Arden & Rutter, [1923] 2 K. B. 865.

266i. —— —— **Given under Act subsequently repealed—Necessity for notice under repealing Act.**]—A tenant who had on Sept. 29, 1920, received notice to quit his farm on Sept. 29, 1921, gave notice on Nov. 17, 1920, to his landlord of his intention to claim compensation for disturbance under A. H. Act, 1908, s. 11. That sect. was repealed by the Act of 1920, which came into force on Jan. 1, 1921, & by sect. 10 substituted a new right to compensation for disturbance. The tenant gave no notice of his intention to claim compensation under that sect. as required by sub-sect. 7 (*b*) thereof:—*Held:* not having given notice under sect. 10 of the Act of 1920, he had no right of claim under that sect., but his right of making a claim under A. H. Act, 1908, s. 11, was preserved by Interpretation Act, 1889 (c. 63), s. 38, notwithstanding the repeal of sect. 11.—HAMILTON-GELL *v.* WHITE, [1922] 2 K. B. 422; 91 L. J. K. B. 875; 127 L. T. 728; 38 T. L. R. 829; 67 Sol. Jo. 80, C. A.

:—**Consd.** Briggs *v.* Dryden, Talbot *v.* Vickers, 2 K. B. 667.

now, A. H. Act, 1923, s. 12.

266j. **Agricultural Holdings Act, 1923 (c. 9)—Right to compensation—Refusal or failure to agree to arbitration.**]—(1) A landlord of a holding

notice to quit. Having taken over another farm with a bound stock, he sold his sheep at a dispersing sale, the landlord refusing to take them over. In a claim for compensation for the difference between the price realised & the "going concern" value:—*Held:* the loss was directly attributable to the quitting of the holding under the above sub
KERWICK *v.* WRIGHT, [1924] S. C. 766.

gave the tenant notice to quit, & in the same document stated that he had no desire to terminate the tenancy if the tenant would agree to his demand that the rent should be fixed by arbn. The tenant did not agree to arbn. :—*Held :* the tenant did not thereby disentitle himself to compensation, for the refusal or failure to agree to arbn. dealt with by sect. 12 (1) (e) of the above Act is a refusal or failure which has taken place before the date of the notice.

(2) It cannot be laid down as a matter of law, that in no case can the minimum compensation of one year's rent provided by sect. 12 (6) be reduced under the provisions of sect. 12 (8) if the tenant, having held two or more holdings as tenant, remains in possession of one of them. But the provisions of sect. 12 (8) have no application to a case in which the tenant remains in possession of the other holding or holdings, not as tenant, but as owner.—WESTLAKE *v.* PAGE, [1926] 1 K. B. 299 95 L. J. K. B. 456 ; 134 L. T. 612, C. A.

266k. Amount of compensation—Tenant holding two or more holdings.]—WESTLAKE *v.* PAGE, No. 266j, *ante*.

SUB-SECT. 3*a*.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION.

266l. Corn Production Act, 1917 (c. 46), s. 9 (9)—Who is person interested—Tenant.]—(1) A notice to convert certain land into tillage, made under sub-sect. 1 of the above sect. & Defence of the Realm Regulations, 1914, reg. 2 M, was served on the owner of land who was in occupation. After the service of the notice the owner agreed to let the land to a tenant who entered into occupation & carried out the requirements of the notice. The notice had not been served on the tenant. The tenant claimed compensation for loss alleged to have been suffered by him by reason of his having carried out the requirements of the notice, & the claim was referred to arbn. under the Act, & the arbitrator stated a case in which he asked the ct. certain questions :—*Held :* the tenant was a "person who was interested in the land in respect of which the notice was served," within sub-sect. 9 of the above sect., inasmuch as he was interested at the time when the loss was alleged to have occurred ; & the tenant came within the words of the sub-sect. "who suffers any loss by reason of the exercise of the powers conferred by this sect.," & was entitled to compensation for the loss, if any, though the notice had not been served on him, as he had carried out the requirements of the notice.

(2) Two notices were served, each in respect of a different field in a separate farm occupied by the same tenant :—*Held :* in the circumstances, the loss, if any, in respect of each field should be assessed separately.

(3) The tenant of certain land in respect of which a notice to plough had been served under the Act sent in a claim for compensation on Sept. 28, 1918, for the year 1918, & in 1919 he sent in a claim for compensation for 1919. The arbn. to assess compensation was held after both claims had been sent in : —*Held :* the assessment should not be based on the loss, if any, in each year separately ; (BANKES, L.J.) the arbitrator should take the experience of the two years, setting off any profit in one year against any loss in the other ; (SCRUTTON & ATKIN, L.JJ.) the whole effect of the exercise of the powers conferred by the sect. had to be considered by the arbitrator, including an estimate of the probable loss or profit in the future. —*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, [1921] 1 K. B. 281 ; 90 L. J. K. B. 228 ; 124 L. T. 407 ; 85 J. P. 89 ; 18 L. G. R. 790, C. A.

266m. —— Separate notices as to parts of two farms—Occupied by one tenant Method of assessment.]—*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, No. 266j, *ante*.

266n. —— Separate claims by tenant for two successive years Method of assessment.]—*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, No. 266j, *ante*.

266o. —— Award—Jurisdiction of court to remit—Award bad on face for ambiguity or uncertainty.]—In an arbn. for the purpose of awarding compensation under the above Act, the High Ct. may remit to the arbitrator an award bad on the face of it for ambiguity or uncertainty, in accordance with Arbitration Act, 1889 (c. 49), although by sect. 11, sub-sect. 1, of the above Act, it is provided that arbns. thereunder shall be in accordance with A. H. Act, 1908, Sched. 2, which excludes Arbitration Act, 1889. MURRAY *v.* DALTON (1920), 90 L. J. K. B. 101 ; 124 L. T. 762 ; 37 T. L. R. 234 ; 65 Sol. Jo. 155, D. C.

Annotation : **Refd.** *Re* Jones & Carter, [1922] 2 Ch. 599.

Control of food in wartime generally, . Food & Drugs, Vol. XXV., pp. *seq.*

SUB-SECT. TERTAINMENT OF TION.

266p. In respect of what holdings compensation payable—Tenant sub-letting farmhouse.]—By an agreement of tenancy a landlord demised to the tenant a farm of 1,000 acres together with a farmhouse & some cottages. There was a provision that the tenant should

the above sub-sect. were
entitled with if fair notice was
to the opposite party of the n
of the claim against him of the
e had to meet ; (2) the letters
such notice, although they did
not state the legal basis of the
or its actual amount—MONT-
(DUKE) *v.* HART, [1925] S. C.
SCOT.

61)—
of *d on case stated- Binding on
or.*)— MITCHELL (HILL *v.* BUCHAN,
S. C. 390 ; 58 Sc. L. R. 371.—
SCOT.

PART V. SECT. 3, SUB-SECT. 3a.

st. *Agricultural Holdings Act*, 1908 (*c.* 64)—*Appeal—Whether maintainable from opinion of sheriff on case stated—Claim under Corn Production Act*, 1917 (*c.* 46).]—JOHNSON-FERGUSON *v.* BOARD OF AGRICULTURE, [1921] S. C. 103 ; 58 Sc. L. R. 96.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 3b.

266p l. *Particulars of claim—Sufficiency—Agricultural Holdings (Scotland) Act*, 1923 (*c.* 10), *s.* 15 (2).]—**By a letter, written on receipt of a** notice from the tenant of his intention to terminate his tenancy of a sheep farm, the landlord intimated that he reserved his claim in respect of depletion of the sheep stock : & by a letter, written within two after the termination of the in which he referred to his former letter, he stated that only 51 per cent. of the sheep stock had been delivered to the incoming tenant, & that the t of the claim would be

mined :—*Held :* (1) in view of the severity of the non-compliance, the

use the demised premises for farming purposes. The tenant subsequently, with the permission of the landlord, sub-let the farmhouse to a lady who used it as a house for paying guests. Upon the determination of the lease, the tenant made a claim for compensation under A. H. Act, 1908:—*Held:* the ct. must have regard to the substance of what had been done; by the lease the holding was an agricultural one, & the fact that the farmhouse had been let to a sub-tenant did not cause it to cease to be a "holding" within the Act.—*Re* RUSSELL & HARDING (1922), 128 L. T. 476; 39 T. L. R. 92; 67 Sol. Jo. 123, C. A.

—— **Compensation for Improvements—Under Agricultural Holdings Act, 1908.**] — *See* original volume, p. 42, Nos. 230–232.

266q. **Notice of claim—To whom given—Purchaser—Taking subject to existing tenancies.**]—Applt. was the tenant of an agricultural holding under a tenancy expiring on Sept. 29, 1922. In May, 1922, the landlord contracted to sell the holding, subject to the tenancy, to resp., completion to take place on Sept. 29, 1922. The completion in fact took place on Nov. 2. The contract of sale contained a general condition that the rents, profits or possession of the property should be received or retained & the outgoings discharged by the vendor up to the time appointed for completion, & that current rents should be apportioned. By a special condition it was provided that for the purpose of this general condition any rent payable on Sept. 29 was to be deemed "current rent," & was to be payable by the purchaser on completion. After the determination of the tenancy the purchaser as "landlord" made a claim against the tenant for dilapidations, & the tenant counterclaimed for compensation:—*Held:* the purchaser was not at the date of the termination of the tenancy the "landlord" within A. H. Act, 1908, s. 48, & Agriculture Act, 1920 (c. 76), s. 18.—TOMES *v.* TURVEY (1923), 93 L. J. K. B. 785; 131 L. T. 330; 68 Sol. Jo. 385, C. A.

—— **For compensation for improvements—Under Agricultural Holdings Act, 1908.**] — *See* original volume, p. 46, Nos. 245–250.

—— **For compensation to landlord for deterioration.**]—*See* No. 261a, *ante*.

—— **For compensation for disturbance—Under Agricultural Holdings Act, 1908.**]—*See* original volume, p. 48, No. 266; & Nos. 265b. 265c, *ante*.

—— — **Under Agriculture Act, 1920 (c. 76).**]

266r. **Particulars of claim—Sufficiency.**]—*Held:* having regard to the severity of the penalty attached to non-compliance with Agriculture Act, 1920 (c. 76), s. 18 (2), namely, total extinguishment of the claim, the presumption was that the requirement of "particulars" was not intended to be construed strictly, &, for the purpose of keeping the claim alive & enabling the parties to get before the arbitrator, a less degree of particularity was required to satisfy the sect. than would be required of particulars of a statement of claim in an action, notwithstanding that when the parties get before the arbitrator he might be of opinion that the particulars were insufficient, & might order further & better particulars to be given.—JONES *v.* EVANS, [1923] 1 K. B. 12; 92 L. J. K. B. 35; 128 L. T. 228, C. A.

266s. **Award—Setting aside—Jurisdiction of court—Error on face of award.**]—The inherent jurisdiction of the High Ct. to set aside an award under A. H. Act, 1908, on the ground of error appearing on the face of it where there has been no misconduct on the part of the arbitrator is not taken away by that Act. That jurisdiction was not excluded by Arbitration Act, 1889 (c. 49), & when the jurisdiction under that Act with reference to arbn. proceedings under the A. H. Act, 1908, was transferred to the county ct. by that Act, the inherent jurisdiction of the High Ct. in those matters was neither expressly nor by implication transferred to it.—*Re* JONES & CARTER, [1922] 2 Ch. 599; 91 L. J. Ch. 824; 127 L. T. 622; 38 T. L. R. 779; 66 Sol. Jo. 611, C. A.

266t. —— —— **Time for notice of motion to set aside.**]—In an arbn. under the A. H. Act, 1908, the award was made on Apr. 8, 1921, & on June 3 applt. gave notice of motion to set aside the award on various grounds. There was no rule either under County Cts. Act, 1888 (c. 43), or under A. H. Act, 1908, dealing with the time within which a notice of motion to set aside an award must be given:—*Held:* the words "principles of practice" in County Cts. Act, 1888 (c. 43), s. 161, did not refer to specific rules of the High Ct., & the time limit of six weeks under R. S. C., Ord. 64, r. 14, was not a "principle of practice" within that sect. of the Act; therefore the only time limit applicable in the present case was under Stat. Limitations & under the doctrine of laches, & the motion to set aside the award was made in time.—McCREAGH *v.* FREARSON (1921), 91 L. J. K. B. 365; 126 L. T. 601, D. C.

266u. —— **Order directing arbitrator to state special case—Appeal lies to Divisional Court.**]—STEVENS *v.* DOWNHAM, ISLE OF ELY (FEOFFEES OF POOR LANDS), [1926] W. N. 168.

266v. —— **No power to order arbitrator to state special case on question not within submission to arbitration.**]—STEVENS *v.* DOWNHAM, ISLE OF ELY (FEOFFEES OF POOR LANDS), [1926] W. N. 168.

—— **Of compensation for improvements—Under Agricultural Holdings Act, 1908.**] — *See* original volume, p. 47, No. 254–256.

267a. —— **"Treated as a market garden."**]—(1) *Held:* the word "treated" in sect. 42 (1) of the above Act, in the collocation in which it was there used did not mean simply that the holding should be in use or cultivation as a market garden, but that it should be let by one person as landlord & occupied by the other as tenant as a market garden, & so treated as between them for the purpose of governing their rights in respect of the holding as a market garden.

By an agreement in writing dated Dec. 31, 1919, & made between the landlord of the one part & the tenant therein described as "market gardener" of the other part, it was agreed (clause 1): that the landlord should let & the tenant should take the farm therein

described for the term of one year from Sept. 19, 1919, & so on from year to year at the yearly rent of £185 by half-yearly payments on Mar. 25 & Sept. 29 in each year, & that the tenant should pay to the landlord as a further rent at the rate of £6 per cent. *per annum* on all sums of money expended by the landlord in the supply of any fruit trees during the tenancy. By clause 7 the tenant was to cultivate the land on the best & most approved system of gardening in general practice in the neighbourhood, & was not to cut down, grub up, or destroy any fruit trees growing in or upon the land, or at any time to be planted thereon, under the provisions of the agreement, without the consent in writing of the landlord or his agent first had & obtained. By clause 9 the landlord was during the term to supply the tenant at his own expense with all fruit trees which might at any time be agreed between the landlord & tenant to be necessary, & the tenant was to pay a certain additional rent in respect of the fruit trees so supplied. Clause 11 contained the following proviso: "That nothing herein contained shall be deemed to be an agreement by the landlord that the premises hereby demised or any part thereof shall be let or treated as a market garden or give rise to a claim for compensation for fruit trees or bushes under A. H. Act, 1908, or any statutory modification thereof": —*Held:* (2) clause 11 of the agreement contained the clearest possible expression of the intention of the parties that the holding was not to be treated as a market garden; there was therefore no agreement in writing within sect. 42 (1) of the Act, by which it was agreed that it should be let or treated as a market garden, & therefore no claim to compensation on that basis arose, because the existence of such an agreement was a condition precedent to such a claim; (3) the agreement was not one which was avoided by sect. 5 of the Act, because the condition precedent to the tenant having the right to claim compensation had not been satisfied.—*Re* MASTERS & DUVEEN, [1923] 2 K. B. 729; 68 Sol. Jo. 11; *sub nom.* MASTERS *v.* DUVEEN, 93 L. J. K. B. 57; 130 L. T. 13, C. A.

267b. Market garden — What is — Garden of country house — Sale of produce.] The fact that the occupier of a country house sells regularly one-half of the produce of the gardens occupied therewith does not constitute the gardens a market garden. - BICKERDIKE *v.* LUCY, [1920] 1 K. B. 707; 89 L. J. K. B. 558; 81 J. P. 61; 36 T. L. R. 210; 64 Sol. Jo. 257; 18 L. G. R. 207, D. C.

Annotation **Refd.** Lowther *v.* Clifford (1925), 90 J. P. 55.

267c. [illegible], Land was cultivated in order that the crops might be sold, & the crops included fruit & rhubarb: *Held:* (1) the land was a market garden within A. H. Act, 1923, s. 57; (2) having regard to sect. 51 & other sects. of that Act, sect. 16 should not be read with an unrestricted meaning, & the landlord's right of action to recover the expense of making up a road had not been affected by the provision for reference to arbn. in that sect. (3) *Semble:* sect. 16 deals with procedure. - LOWTHER *v.* CLIFFORD [1927] 1 K. B. 130, 95 L. J. K. B. 570, 200; 90 J. P. 113; 42 T. L. R. 432; 70 Sol. Jo. 511; 21 L. G. R. 231, C. A.

Part VI.—Fixtures.

268. *Add. Annotations:*—**Consd.** *Re* Mann & Harvey (1920), 123 L. T. 242. **Refd.** Pole-Carew *v.* Western Counties & General Manure Co., [1920] 2 Ch. 97.

268a. —— Removal by tenant—Agricultural Holdings Act, 1908, s. 21—Power to contract out of Act.]—A. H. Act, 1908, contains no prohibition against the parties to a lease or tenancy contracting themselves out of the provisions of sect. 21 of the Act, & it is therefore competent to them to do so.

A lease of a farm contained a covenant by the lessee to deliver up at the end of the term all the demised premises & all new & other buildings & erections thereon & all such fixtures as were in anywise affixed or fastened to the freehold of the premises:—*Held:* the covenant effectually excluded the provisions of sect. 21 of the Act, & the tenant was not entitled to remove certain buildings & fixtures erected & affixed by him during the term.—PREMIER DAIRIES *v.* GARLICK, [1920] 2 Ch. 17; 89 L. J. Ch. 332; 123 L. T. 44; 64 Sol. Jo. 375.

268b. —— —— No notice by tenant of intention to remove—Claim by tenant for loss on removal.]—An agricultural tenant who at the expiration of his tenancy omits to give to the landlord, under A. H. Act, 1908, s. 21, notice of his intention to remove a fixture or building, whereby the landlord is prevented from exercising the option given to him by the Act to purchase the same, cannot afterwards claim compensation for expenses or loss suffered through the removal under A. H. Act, 1914, s. 1, & A. H. Act, 1908, s. 11.—*Re* HARVEY & MANN (1920), 89 L. J. K. B. 687; *sub nom. Re* MANN & HARVEY, 123 L. T. 242, C. A.

271. *Add. Annotation:* **Refd.** Pole-Carew *v.* Western Counties & General Manure Co., [1920] 2 Ch. 97.

273. *Add. Annotation:*—*As to* (3) **Refd.** Vaudeville Electric Cinema *v.* Muriset, [1923] 2 Ch. 74.

275. *Add. Annotation:*—**Consd.** *Re* Mann & Harvey (1920), 123 L. T. 242.

276. *Add. Annotation:*—*As to* (1) **Refd.** Premier Dairies *v.* Garlick, [1920] 2 Ch. 17.

277. *Add. Annotation:*—*As to* (1) **Refd.** *Re* [illegible] stone Brick & Stone Co., Southall *v.* Wes [1919] 1 Ch. 110.

Part VIII. Growing Crops and Crops, Emblements, and Gleaning.

280. *Add. Annotations :*—**Refd.** Richards *v.* Davies, [1921] 1 Ch. 90; Back *v.* Daniels (1924), 69 Sol. Jo. 160.

284. *Add. Annotation :*- **Mentd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 915.

286. *Add. Annotation :*—**Consd.** Stephenson *v.* Thompson, [1924] 2 K. B. 240.

296. *Add. Annotation :*—**Consd.** Stephenson *v.* Thompson, [1924] 2 K. B. 240.

298. *Add. Annotation :*—**Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

304. *Add. Annotations :* —**Consd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714. **Apld.** *Re* Wait, [1926] Ch. 962.

311a. — — — —.]—At an auction sale of grass & crops held at a farm pltf. purchased the crop of swedes in one of the fields, & deft. purchased the grass on an adjoining field. One of the conditions upon which pltf. purchased the crop of swedes was that he should not remove from the field more than one-half of the crop of swedes, the other half having to be consumed on the field. Deft. put a number of sheep into his field of grass, & the sheep got into pltf.'s field of swedes & did considerable damage to the swedes :—*Held :* the fact that the right of pltf. to remove the swedes from the field was limited to one-half of the crop did not prevent him from maintaining an action of trespass in respect of the damage done by deft.'s sheep, as pltf. had such an exclusive right of possession in the crop as would entitle him to maintain an action of trespass.—WELLAWAY *v.* COURTIER, [1918] 1 K. B. 200; 87 L. J. K. B. 299; 118 L. T. 256; 34 T. L. R. 115; 62 Sol. Jo. 161, D. C.

Annotation :—Richards *v.* Davies, [1921] 1 Ch. 90.

315. *Add. Annotations :*—*As to* (1) **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209; Gurney *v.* Houghton (1920), 123 L. T. 706; Hudson's Bay Co. *v.* Maclay (1920), 36 T. L. R. 469; Newcastle Breweries *v.* R., [1920] 1 K. B. 854; Shutler *v.* Rolfe (1920), 36 T. L. R. 828.

Part IX.—Trees and Timber.

352a. — — — — — — — —.]—*Re* TOWER'S CONTRACT, [1924] W. N. 331.

362. *Add. Annotation :*—**Mentd.** *Re* Terry, Terry *v.* Terry (1918), 87 L. J. Ch. 577.

366. *Add. Annotation :*—**Mentd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

392. *Add. Annotation :*—**Mentd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

395. *Add. Citation :*—15 W. R. 640.

396. *Add. Annotations :*— **Refd.** De Silva *v.* Korossa (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

404. *Add. Annotation :*—**Distd.** Noble *v.* Harrison, [1926] 2 K. B. 332.

405. *Add. Annotations :* —*As to* (1) **Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332. *As to* (2) **Refd.** Collis *v.* Amphlett (1919), 89 L. J. Ch. 101; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341. *As to* (3) **Refd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341. *As to* (4) **Consd.** Collins *v.* Amphlett (1919), 89 L. J. Ch. 101. **Refd.** Mills *v.* Brooker, [1919] 1 K. B. 555; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

406. *Add. Annotations :*—**Consd.** Collis *v.* Amphlett (1919), 89 L. J. Ch. 101. **Refd.** Mills *v.* Brooker, [1919] 1 K. B. 555; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Noble *v.* Harrison, [1926] 2 K. B. 332.

406a. —— —— **Right to appropriate fruit.**]—Where the branches of fruit trees growing near their owner's boundary overhang the land of the adjoining owner, the right of the adjoining owner to lop the branches does not carry with it the right to pick & appropriate the fruit, & if he does so he is guilty of conversion & liable to the owner for its value.—MILLS *v.* BROOKER, [1919] 1 K. B. 555; 88 L. J. K. B. 950; 121 L. T. 254; 35 T. L. R. 261; 63 Sol. Jo. 431; 17 L. G. R. 238, D. C.

PART VIII. SECT. 1.

280 i. *Sale —Interest in land ... sever ance —Statute of ... uses.*]—ROBINSON *v.* LONG, ... L. R. 918.—**CAN.**

... *r.*

CENTRAL CAN ... CANNING CO.
4 D. L. R. 12 ... 3 W. W. R.
CAN.

Right of ... to ... by ...
...]—*Held :* ...
... in the wheat while ...
... out of the agreemen...
... to a severance of the crop from the land, the money ... for testator's share in the crop ... into the residue of the ...
... V. L. R. 686.—**AUS.**

p ii. —— *Cost ... -A* ... sor on the crop-payment plan a ... to pay one-half the cost of threshing *Held :* he was liable for one-half of the cost of hauling the sheaves from the stook to the thresher.—TOCHER *v.* JOHNSON (1922), 68 D. L. R. 768; 32 Man. L. R. 356; [1922] 2 W. W. R. 6.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

403 iii. —— —— *Property in* ... W. cuts off that portion of a tree overhanging his lot, the trunk of which is on L.'s lot, although the ownership of the fallen portion is in L. & he has the right to enter on W.'s lot & take it away, there is no obligation on the part of W. to deliver the cut portion to L.—LOVEROCK *v.* WEBB (1921), 70 D. L. R. 748; 30 B. C. R. 327.—**CAN.**

403 iv. —— —— —— —.]—The owner of land may lop branches overhanging his land without previous notice to the owner of the tree, but may not keep the branches so lopped down for himself.—DE VILLIERS *v.* C ... (1883), 2 S. C. 251.—**S. AF.**

403 v. —— ——.]—A person is entitled to cut off those portions of trees growing on his neighbour's land which overhang his land.—VISHNU JAGANNATH JOSHI *v.* VASUDEV RAGHUNATH OKA (1918), I. L. R. 43 Bom. 164.—**IND.**

403 vi. *S. P.* MAUNG PO THAUNG *v.* MA GYI (1923), I. L. R. 1 Ran. 281.—**IND.**

407. *Add. Annotation :*—**Refd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

409. *Add. Annotation :*—**Mentd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773.

412. *Add. Annotation :*—**Refd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

416. *Add. Annotations : — Generally,* **Mentd.** Michael *v.* Phillips (1923), 130 L. T. 142; Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

418. *Add. Annotation :*—**Refd.** Musgrove *v.* Pandelis, [1919] 2 K. B. 43.

419. *Add. Annotations :*—**Refd.** Derry *v.* Sanders, [1919] 1 K. B. 223. **Mentd.** Thomson *v.* St. Catharine's College, Cambridge, etc., [1919] A. C. 468.

428. *Add. Annotation :—Generally,* **Mentd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

484. Before this case add "*See, also,* ECCLESIASTICAL LAW, Vol. XIX., p. 511."

Add. Annotation :—**Refd.** Stockman *v.* Whither (1614), 1 Roll. Rep. 86.

519. *Add. Annotations :*—**Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

527. *Add. Annotation :*—**Mentd.** Sack *v.* Jones, [1925] Ch. 235.

591. *Add. Annotation :*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

602. *Add. Annotation :*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

615. *Add. Annotation :*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

624. *Add. Annotation :*—**Mentd.** *Re* Gardner, Ellis *v.* Ellis, [1924] 2 Ch. 243.

649. *Add. Annotation :*—**Mentd.** *Re* Gardner, Ellis *v.* Ellis, [1924] 2 Ch. 243.

652. *Add. Annotation :*—**Consd.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] Ch. 500.

652a. —— —— ——.]—(1) By a settlement certain hereditaments were settled to the use of certain trustees during the life of A. without impeachment of waste upon the trusts, & with & subject to the powers hereinafter declared, with remainders as therein mentioned, & it was declared that the hereditaments were thereby limited to the trustees upon trust, during the life of A., that if at the time of such limitation taking effect in possession A. should not be or have been bkpt. the trustees should allow him to enter into & remain in the possession or receipt of the rents & profits of the settled estates during his life or until he should become bkpt. By an agreement, dated Dec. 7, 1920, A. agreed to sell all the timber standing in certain portions of the settled estates. On Jan. 18, 1922, a contract was entered into by A. for sale of part of the settled land, subject to the agreement of Dec. 7, 1920, & on Mar. 14, 1922, such land was conveyed to the purchaser, subject to the agreement :—*Held :* the proceeds of sale of the timber belonged to A.

(2) At the date of the contract for the sale of land & at the date of the conveyance, part of the timber, to the value of about £500, remained unent :—*Held :* although as regards the purchaser of the land the timber was divided from the freehold, yet nevertheless it remained part of the inheritance & subject to the limitations of the settlement; accordingly, it did not vest in A., but being however part of the inheritance & still remaining subject to the limitations of the settlement, on severance it became the property of A., & therefore the £500 belonged to him.—*Re* LONDESBOROUGH (EARL), SPICER *v.* LONDESBOROUGH (EARL), [1923] 1 Ch. 500; 92 L. J. Ch. 423; 128 L. T. 792; 67 Sol. Jo. 439.

656. *Add. Annotation : — As to* (1) **Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

661a. —— —— ——.] — *Re* LONDESBOROUGH (EARL), SPICER *v.* LONDESBOROUGH (EARL), No. 652a, *ante*.

671. *Add. Annotation :* **Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

680. *Add. Annotation :* **Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

696. *Add. Annotation :* **Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

711. *Add. Annotation :*—**Consd.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500.

712. *Add. Annotation :*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

736. *Add. Citation :—sub nom.* STEWKLEY *v.* BUTLER (1615), Moore, K. B. 880; 72 E. R. 970.

Add. Annotations : **Mentd.** Ward *v.* Everard (1695), Comb. 320; Bridgwater *v.* Bolton (1704), 1 Salk. 256; Ambatielos *v.* Anton Jurgens Margarine Works, [1922] 2 K. B. 185.

407 i a. —— ——.]—Where the soil & freehold of a highway is in the Crown & the possession of the highway in the municipality, an action is not maintainable by an adjoining landowner for damages for the cutting by the municipality of trees on the highway.—A.-G. FOR BRITISH COLUMBIA & WATT *v.* SAANICH CORPN., [1921] 1 W. W. R. 471; 56 D. L. R. 482.—CAN.

407 ii a. —— ——.]—A person can obtain an injunction to remove the overhanging portions of trees though he may not be able to prove any damage.—VISHNU JAGANNATH JOSHI *v.* VASUDEP RAGHUNATH OKA I. L. R. 43 Bom. 164.—IND.

sb. *Leaves blown on to neighbour's . —Polluting water—Trees not noxious & planted for shelter.*]—*Held :* the rule in *Itylands v. Fletcher* (1868), L. R. 3 H. L. 330, did not apply.—MATTH *v.* FORGIE, [1917] N. Z. L. R. 92 N.Z.

PART IX. SECT. 2, SUB-SECT. 9. C.

sc. *Right to cut trees for profitable enjoyment of land.*]—A may have an implied right to cut or destroy bush in order to obtain in a reasonable way the profitable enjoyment of the land, &, in lieu of burning or destroying the timber, may save it & sell it for his own benefit. Where, however, the cutting down of the timber is done for the purpose of an immediate profit out of the & without any regard to the t of the land, there is no to cut & the timber. In the absence of any property in the timber in the d to the first estate of in fee or in tail. HIKAWA G.] N. Z. L. R. N.Z.

PART IX. SECT. 2, SUB-SECT. 10. E. (a).

649 i. *Tenant for able—Trees taken by overruling authority.*]—*Held :* n by way of on as part of the of & HOPER PIGOTT 9] I. L. R. 23.—IR.

739. *Add. Annotations :—As to* (1) **Refd.** Joel *v.* International Circus & Christmas Fair (1920), 124 L. T. 459; Cohen *v.* Roche (1926), 95 L. J. K. B. 945; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re* Wait, [1926] Ch. 962. *As to* (2) **Refd.** Waimiha Sawmilling Co. *v.* Waione Timber Co., [1926] A. C. 101. *Generally*, **Mentd.** Thames Sack & Bag Co. *v.* Knowles (1918), 88 L. J. K. B. 585.

745. *Add. Annotation :*—**Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

769. *Add. Annotation :—As to* (2) **Refd.** Ambatielos *v.* Anton Jurgens Margarine Works, [1922] 2 K. B. 185.

808. *Add. Annotation :—As to* (1) **Refd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.

810. *Add. Annotations : As to* (2) **Refd.** Joel *v.* International Circus & Christmas Fair (1920), 121 L. T. 459; Waimiha Sawmilling Co. *v.* Waione Timber Co., [1926] A. C. 101. *Generally*, **Mentd.** Thames Sack & Bag Co. *v.* Knowles (1918), 88 L. J. K. B. 585; Cohen *v.* Roche (1926), 95 L. J. K. B. 915; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re* Wait, [1926] Ch. 962.

810a. — — — **Confiscation by foreign State—Frustration.**] By a contract the vendors agreed to sell & the purchasers to purchase the timber then standing meut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. Merchantable timber was to mean & include all trunks & branches of trees not less than six inches in diameter at a height of four feet from the ground. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated :—*Held :* the contract was not an executed contract on the part of the vendors at the date when it was signed, & the property in the timber had not passed to the purchasers; the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—KURSELL *v.* TIMBER OPERATORS & CONTRACTORS (1926), 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.

814. *Add. Annotation :*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

828. *Add. Annotation :—As to* (1) **Refd.** *Re* Williams' Settlement, Williams Wynn *v.* s. [1922] 2 Ch. 750.

840. *Add. Annotations :—Generally*, **Mentd.** *Re* Crosse, Oldham *v.* Crosse, [1920] 1 Ch. 240; Rotunda Hospital, Dublin *v.* Coman (1920), 7 Tax Cas. 517; *Re* Shrewsbury Estate Acts, Shrewsbury *v.* Shrewsbury, [1924] 1 Ch. 315.

842. *Add. Citations :*—119 L. T. 596; 62 Sol. Jo. 716, C. A.

851. *Add. Annotation :*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

874. *Add. Annotation :*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

921. *Add. Annotation :*—**Mentd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

928. *Add. Annotation :—As to* (1) & (2) **Consd.** Wheeler *v.* Keeble (1914), Ltd., [1920] 1 Ch. 57.

949. *Add. Annotation :* —**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

953. *Add. Annotations :*—**Mentd.** Osborne *v.* Bradley, [1903] 2 Ch. 446; Sharp *v.* Harrison, [1922] 1 Ch. 502; Kelly *v.* Barrett, [1921] 2 Ch. 379.

970. *Add. Annotations :* —**Consd.** Baldock *v.* Westminster City Council (1918), 88 L. J. K. B. 502; Sheppard *v.* Glossop Corpn., [1921] 3 K. B. 132.

970a. — — — **Omnibus company with right to cut trees—Injury to passenger.**] — Where the route of an omnibus lies along a road lined by trees, which by permission of the owner the omnibus co. have taken reasonable care to cut, an accident caused to an outside passenger by an overhanging branch does not render the co. liable, if there is no evidence that the driver was driving too near the trees, or that he had any reason to suspect that they were overhanging.—TRINDER *v.* GREAT WESTERN RY. CO. (1919), 35 T. L. R. 291.

970b. — — — **Overhanging trees.**]—Deft. was possessed of land on which there was growing a beech tree, a bough of which overhung a highway. This bough suddenly broke in fine weather, fell upon pltf.'s vehicle then passing, & caused damage. Neither deft. nor his servants knew that the bough was dangerous, & the fracture was due to a latent defect not discoverable by any reasonably careful inspection :—*Held :* deft. was not liable, as the mere fact that the tree overhung the highway did not make the tree a nuisance, & as he neither knew nor ought to have known of the actual danger, & there was no absolute obligation on him to support a tree overhanging the road unless it appeared, or would appear on a proper inspection, that nature could no longer be relied upon to support it.—NOBLE *v.* HARRISON, [1926] 2 K. B. 332; 95 L. J. K. B. 813; 135 L. T. 325; 90 J. P. 188, 42 T. L. R. 518; 70 Sol. Jo. 691, D. C.

PART IX. SECT. 10.

970 i. Read now "**970b i.**"
970 ii. Read now "**970b ii**

Part X.—Fertilisers, Feeding Stuffs and Seeds.

971a. Feeding stuffs—Act of 1906, s. 1 (4).]—In Sept. 1922, pltf., a pig-keeper, saw defts.' managing director, who offered to sell him the bakery sweepings as pig food at 2*s.* 6*d.* a bag. Pltf. accepted the offer & purchased the sweepings from defts. & fed five pigs with it successfully from Sept. 1922 to Jan. 1923, when the pigs became ill & four of them died. The sweepings consisted of ingredients used in making bread, together with dust & dirt & other odds & ends & string:—*Held:* the words "on the sale of any article" in the above sub-sect. were wide enough to cover the sale of these bakery sweepings; the effect of the sub-sect. was to put the risk upon the seller, who, knowing the constituents of the article which he chose to sell as food for cattle, was made responsible if in fact it contained some article deleterious; if the seller desired to protect himself against the stringent provisions of the Act, it was competent to him to do so by a special contract made for that purpose.—PULLING *v.* LIDBETTER, LTD., [1924] 2 K. B. 111; 93 J. K. B. 542 131 L. T. 119; 88 J. P. 83; 68 Sol. Jo. 615; 22 L. G. R. 456, C. A.

973. *Add. Annotation* —**Refd.** Anderson *v.* Daniel (1923), 130 L. T 418.

974a. —— —— —— ——.]—A seller who in fact delivers a false invoice commits an offence under sect. 6 (1) (*b*) of the above Act, whether the nature of the article is such as to make it obligatory on him under sect. 1 to deliver an invoice or not.—HARVEY & CO. *v.* HEREFORDSHIRE COUNTY COUNCIL, [1920] 2 K. B. 395; 89 L. J. K. B. 601; 123 L. T. 428; 84 J. P. 105; 18 L. G. R. 470, D. C.

975a. —— Sending of sample to seller—Act of 1906, s. 3 (3).]—It is a condition precedent to a prosecution of the seller under sect. 6 (1) (*a*) of the above Act, on a charge of not sending an invoice on the sale of a fertiliser of the soil according to the provisions of sect. 1 (1), that a prescribed portion of the sample thereof taken with a view to the proceedings under sect. 3 (3) shall have been sent to the seller.—VAUGHAN *v.* GRINDELL, [1921] 3 K. B. 412; 91 L. J. K. B. 141; 125 L. T. 315; 85 J. P. 199; 19 L. G. R. 416; 27 Cox, C. C. 5, D. C.

977. *Add. Annotation:*—*As to* (2) **Refd.** Harvey *v.* Herefordshire County Council, [1920] 2 K. B. 395.

978a. —— Effect of—"Reasonable excuse."]—(1) As the object of the Act of 1906 in requiring the vendor to give the statutory invoice & imposing on him a penalty in the event of his default is to protect the purchasers of fertilisers, the effect of non-compliance with the requirement is not merely to render the vendor liable to the penalty, but also to make the sale illegal & preclude the vendor from suing for the price. (2) The fact that, owing to the nature of the article sold as a fertiliser, an analysis of it would necessitate so expensive a process as to make it impossible to sell it after analysis at a profit, affords no "reasonable excuse" within sect. 6 (1), for omitting to give the invoice required by the Act. *Semble:* neither will impossibility of analysis afford any excuse, the intention of the statute in that event being to prohibit the sale of the article altogether. (3) The expression "without prejudice to any civil liability" in sect. 6 (1) refers to the civil liability of the vendor, not to that of the purchaser.—ANDERSON, LTD. *v.* DANIEL, [1924] 1 K. B. 138; 93 L. J. K. B. 97; 130 L. T. 418; 88 J. P. 53; 40 T. L. R. 61; 68 Sol. Jo. 274; 22 L. G. R. 49, C. A.

Annotation:—*As to* (2) **Consd.** Pulling *v.* Lidbetter (1924), 93 L. J. K. B. 542.

979. *Add. Annotations:*—**Refd.** Stearn *v.* Prentice (1918), 88 L. J. K. B. 422; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

PART XI. SECT. 10.

c i. —— *Under licence—Under Forest Act.*]—A.-G. FOR B. C. *v.* ROBERTSON, [1924] 1 D. L. R. 1090; 1 W. W. R. 1155; 33 B. C. R. 325.—**CAN.**

hi. *Right of Crown to sue for* —The C[illegible] in the [illegible] of [illegible] tion may Act, R.S.B.C., 1924 (*c.* 93), s. 114, to recover expenses incurred by [illegible] of the [illegible] on [illegible] d Ex [illegible] in consulting [illegible] defts property [illegible] [13 D. L. R. [illegible] CAN. [illegible] WAN [illegible] [1 W. W. R.

ALIENS.

Part I.—What Constitutes Alienage.

1. *Add. Annotations :*—**Consd.** Markwald *v.* A.-G., [1920] 1 Ch. 348. **Reld.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262. **Mentd.** The Tervaete (1922), 128 L. T. 176.

3. *Add. Annotation :*—**Mentd.** Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850.

13. *Add. Annotation :*—*As to* (2) **Reld.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

13a. —— ——.]—By an Order in Council made on Nov. 5, 1914, Cyprus was annexed, & by a Proclamation made thereunder on Mar. 3, 1915, revoking an earlier Proclamation, it was provided that "all Ottoman subjects, resident in Cyprus on Nov. 5, 1914, have become British subjects." An amending Order in Council made on Nov. 27, 1917, after reciting that doubts had arisen as to the effect of the Order & the proper interpretation of the Proclamation, ordered that the following (*inter alios*) should be deemed to have become British subjects by virtue thereof: "any Ottoman subject who was ordinarily resident & actually present in Cyprus on Nov. 5, 1914." Resp., an Ottoman subject by birth, carried on business in Cairo from 1893 to 1913. In Dec. 1913, he went to Cyprus, & after three or four months brought his family there. He rented a house in Cyprus monthly, & while there discontinued his business in Cairo. He was present in Cyprus on Nov. 5, 1914, & remained there until Oct. 1915, when he returned to Cairo, his family following in December. He received a passport describing him as a British subject, & was so registered at the British Consulate at Cairo, but after annual renewals registration was refused in 1919. He sued for a declaration that he was entitled to registration:—*Held:* if there were any difference between "resident" & "ordinarily resident" the latter became the test by virtue of the interpretative Order of 1917; but on the facts resp. was both "resident" & "ordinarily resident" in Cyprus on Nov. 5, 1914, whether or not Cyprus was then his domicil; & whatever may have been his motive for going there, he was a British subject by virtue of the Order in Council.—GOUT *v.* CIMITIAN, [1922] 1 A. C. 105; 91 L. J. P. C. 18; 38 T. L. R. 100; *sub nom.* GOUT *v.* CIMITIAN, CIMITIAN *v.* GOUT, 126 L. T. 293, P. C.

14. *Add. Annotations :*— **Reld.** Markwald *v.* A.-G., [1920] 1 Ch. 348; Johnstone *v.* Pedlar, [1921] 2 A. C. . **Mentd.** The Tervaete 22), 128 L. T. 176.

20. *Annotations :*—For "*Re* Goodman's Trust (1881), 7 Ch. D. 266" read "*Re* Goodman's Trust (1881), 17 Ch. D. 266."

29. *Add. Citation :*—25 Cox, C. C. 622, D. C.

35. *Add. Annotations :*—**Mentd.** Markwald *v.* A.-G., [1920] 1 Ch. 348; Johnstone *v.* Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.

36. *Add. Annotations :*—**Mentd.** Markwald *v.* A.-G., [1920] 1 Ch. 348; Johnstone *v.* Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.

39. *Add. Annotations :*—**Mentd.** Markwald *v.* A.-G., [1920] 1 Ch. 348; Johnstone *v.* Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.

41. *Add. Annotations :*—**Mentd.** Markwald *v.* A.-G., [1920] 1 Ch. 348; Johnstone *v.* Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.

43. *Add. Annotation :*—**Reld.** *Re* Annesley Davidson *v.* Annesley, [1926] Ch. 692.

49. *Add. Annotations :*—**Mentd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753; Johnstone *v.* Peldar, [1921] 2 A. C. 262.

49a. **Under Treaties of Peace & consequent Orders—Who is foreign national—"Stateless person"—Denationalised German.**]—(1) Pltf. having lost Prussian nationality in 1896, & not acquired nationality of a German State or other nationality:—*Held:* he was not a German national within Peace Treaty of Versailles, Part X., s. 4, or Treaty of Peace Order, 1919.

(2) Statelessness is not unrecognised by the municipal law of this country.

(3) Whether a man is a German national or not must be decided by German municipal law & not by English municipal law.—STOECK *v.* PUBLIC TRUSTEE, [1921] 2 Ch. 67; 90 L. J. Ch. 386; 125 L. T. 851; 37 T. L. R. 666; 65 Sol. Jo. 605.

Annotations :—*As to* (3) **Folld.** *Re* Chamberlain's Settlmt., Chamberlain *v.* Chamberlain, [1921] 2 Ch. 533. *Generally*, **Reld.** Kramer *v.* A.-G., [1923] A. C. 528.

49b. —— —— —— —— **Burden of proof.**]—(1) In 1893 pltfs. were admittedly German nationals, & on the *bonâ fide* assumption that they were still German nationals on Jan. 10, 1920, when the charge under Treaty of Peace Order, 1919, s. 1 (xvi) attached, deft. was in possession of their London property as custodian. In an action to obtain release of their property:—*Held:* the *onus* was on pltfs. to show that they had lost their

PART I. SECT. 1.

—— *Birth in Native*

The subject of a Native Indian State is an alien.—MAHOMED & SON *v.* IMMIGRANTS' APPEAL BOARD (1918), 38 N. L. R. 7.—**S. AF.**

10 iv. —— ——.]—Applt., who was by birth a Bavarian subject, in 1881 a burgher of the Orange Free but in 1883 left the Free State & did not return before 1902, at which date he was resident in, but not a burgher of, the Transvaal. Under the Orange Free State Constitution of 1878 Free State burghership was lost by residence abroad for more than two years:—*Held:* as at the time of the annexation of the Orange Free State & Transvaal in 1902 applt. did not become a British subject either as a burgher of the Orange State or as a resident in the Transvaal, he was by inference still a Bavarian —WOLFF *v.* THE TREASURY, App. D., 336.—**S. AF.**

PART I. SECT. 3.

49a i. *Under Treaties of Peace & ni Orders—Who is foreign national—"Stateless person"—Denationalised German.*]—PAULEY *v.* CUSTODIAN, [1922] App. D. 161.—**S. AF.**

original German nationality before Jan. 10, 1920, & not on deft. to disprove it.

Pltfs. had left their birthplace, Idar, in the district of Birkenfeld, about 1893, & with the exception of short annual visits to their mother, &, in the case of one, six weeks' military training in 1896, they had resided uninterruptedly out of Germany from 1893 to 1917 or 1918, when they were repatriated, after war internment, to Idar, where according to the police register entries, if genuine, they were registered as stateless on their arrival, & also on their departure for Amsterdam in 1920. On Jan. 20, 1923, the Birkenfeld Govt. after inquiry as to the period of pltfs.' absence from Germany, & as to their German visits during that period, granted them certificates to the effect that during that period they had forfeited their German nationality by ten years' "uninterrupted" residence abroad within North German Nationality Law, 1870, s. 21, & were therefore stateless on Jan. 10, 1920. These certificates were based on the view of the Administrative Cts. which, in considering whether German visits break the ten years' period, look to the number, length, purpose & intent of those visits. They were, however directly contrary to the view of the Leipzig Reichsgericht, which holds that the smallest visit, accidental or otherwise, breaks the period:—*Held:* (2) the certificates, which were admittedly only *primâ facie* evidence & open to review in any German ct., were not conclusive in an English ct., & the *onus* was on pltfs. to substantiate them; (3) if the Leipzig ct. view was right, the certificates were invalid; (4) even if the Administrative Ct. view was right, pltfs. had failed to satisfy the English ct. that an Administrative Ct. on being informed of all the circumstances, including fraudulent conduct by pltfs., applications as German nationals in 1915 & 1921, & previous false statements as to their German visits, would necessarily uphold the certificates; (5) having regard to the conflict of opinion in the German cts., pltfs. had failed to discharge the *onus* of proving that by unquestionable & undoubted German law they had lost their nationality on Jan. 10, 1920.—HAHN *v.* PUBLIC TRUSTEE, [1925] Ch. 715; 95 L. J. Ch. 9; 133 L. T. 713; 14 T. L. R. 586; 69 Sol. Jo. 824.

49c. —— —— British subject marrying German—& naturalised as German during war.]—By a settlement dated in 1902 a fund of £5,000 was vested in trustees on trust to invest & pay the income of the trust funds to H. during his life or until he should become bkpt. or charge it, "or until some event shall happen . . . whereby the income or any part thereof if belonging absolutely to him would become vested or charged in favour of some other person or persons or corpn.," & in the event of the determination during the life of H., of the above trust in his favour the trustees were given a discretion to apply the income for the benefit of all or any the said H., & his present or any other after-taken wife & his issue & the persons interested for the time being under the ulterior trusts, &, subject thereto, were directed to hold the capital & income of the trust funds upon trust for the benefit of the issue of H. & in default of issue upon trust for H.'s nephews & nieces. H. was born in England of English parents but had resided in Germany since 1906 & had been twice married there to German wives. During the war, on Aug. 8, 1916, he obtained a certificate of naturalisation as a German. In these circumstances a summons was taken out by the trustees to have it determined whether the life interest of H. in the funds was forfeited by the charge imposed on property of German nationals in this country on Jan. 10, 1920, by the Treaty of Peace with Germany, art. 297, or Treaty of Peace Order, 1919, & how the income accrued since Aug. 4, 1914, ought to be disposed of. It was admitted at the hearing on behalf of H. that in a German ct. applying German law he would be recognised as a German citizen. No question arose as to the income before Nov. 4, 1915, which had been paid over to H.'s agent:—*Held:* (1) the decision whether a person was a German national within the Treaty & Order fell to be determined exclusively by German municipal law, & accordingly H. was a German national; (2) H.'s interest under the settlement was forfeited as on Jan. 10, 1920, & subject to the payment of costs the accumulations of income in the trustees' hands from Nov. 4, 1915, to Jan. 10, 1920, must be paid to the custodian.—*Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, [1921] 2 Ch. 533; 91 L. J. Ch. 34; 126 L. T. 52; 37 T. L. R. 966; 66 Sol. Jo. (W. R.)

n:—*As to* (1) **Apprvd.** Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850.

49d. —— —— —— —— —— —— —— ——]—A British-born woman, between the date of the signing of the Peace Treaty between England & Germany & the date of its coming into force, went to Germany & there married a German subject. At the date of her marriage & on Jan. 10, 1920, when the Treaty came into force, she was the registered holder of shares in an English limited co.:—*Held:* under British Nationality & Status of Aliens Act, 1914 (c. 17), s. 10, she must be deemed to be an alien, & by her marriage, which was not invalid, she had lost her British nationality & became a German national, so that her shares were subject to the charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi).—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., [1922] 2 Ch. 850; 91 L. J. Ch. 791; 126 L. T. 85; 38 T. L. R. 852; 66 Sol. Jo. 709, C. A.

Annotation:—**Reld.** *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

49e. —— —— Dual nationality.]—KRAMER *v.* A.-G., No. 215j, *post*.

49f. —— —— —— —— —— —— Austrian acquiring new nationality.]—An Austrian granted citizenship of the Czecho-Slovakian Republic after the disruption of the Austrian Empire, but before July 16, 1920, the date when the Treaty of Peace between the Allied & Associated Powers & Austria came into force, remains subject to the charge created by art. 249 (b) of the Treaty & Treaty of Peace (Austria) Order, 1920, s. 1 (ix), notwithstanding the provisions of art. 230 of the Treaty.—ROTHSCHILD *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1923] 2 Ch. 542; 93 L. J. Ch. 508; 130 L. T. 175; 68 Sol. Jo. 40

49g. **By what law decided.**] - STOECK *v.* STEE, No.

49h. - - - - —.] — *Re* (SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, No. 19c, *ante*.

49l. - **Decision of administrator - Whether final.**] - By the Treaty of Peace with Austria, art. 249 (b), the Allied & Associated Powers reserved the right to retain & liquidate all property, rights & interests which belonged at the date of the coming into force of the Treaty to nationals of the former Austrian Empire, but it was provided that "persons who within six months of the coming into force of the present Treaty show that they have acquired *ipso facto* in accordance with its provisions the nationality of an Allied or Associated Power . . . will not be considered as nationals of the former Austrian Empire within the meaning of this paragraph." The annex to arts. 249 & 250 sanctioned the ion of a charge on such property, or interests. Arts. 248 to 262 with their annexes were scheduled to Treaty of Peace (Austria) Order, 1920, & by art. 1 (i) of the Order given full effect as law. By art. 1 (ix), the charge was imposed on all property, rights & interests within His Majesty's Dominions belonging to nationals of the former Austrian Empire at the date when the Treaty came into force. Art. 2 provided that "for the purposes of the foregoing provisions of this Order but not including the schedule therein referred to . . . the expression 'national of the former Austrian Empire,' does not include persons who within six months of the coming into force of the Treaty show to the satisfaction of the administrator that they have acquired *ipso facto* in accordance with its provisions nationality of an Allied or Associated Power":—*Held:* where the administrator had decided that he was not satisfied that pltf., who was originally a national of the former Austrian Empire, had acquired *ipso facto* the nationality of an Allied or Associated Power, the ct. would not, in an action by him for a declaration that he has "shown that he has acquired *ipso facto* in accordance with the Treaty the nationality of the Republic of Poland & that he is not a national of the former Austrian Empire within the Treaty & the Treaty of Peace Order, & that his property, rights & interests in His Majesty's Dominions are not subject to be charged under the Treaty & the Treaty of Peace Order," go behind the decision of the administrator & investigate independently the question of nationality.—REITZES DE MARIENWERT *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1924] 2 Ch. 282; 93 L. J. Ch. 587; 132 L. T. 42; 40 T. L. R. 698; 68 Sol. Jo. 614, C. A.

Annotation:—**Reld.** Groebel *v.* Hungarian Property Administrator (1925), 70 Sol. Jo. 315.

Part II. Rights, Liabilities, and Disabilities of Aliens in Time of Peace.

50. *Add.* **Reld.** The Wilhelmina, [1923] P. 112.

Add. Annotation: **Reld.** J *v.* Fed ar, [1921] 2 A. C. 62.

Add. Ann :- **Reld.** *v.* A. Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

65a. - — **Detention of property - Ratification by Crown Citizen of friendly State personally hostile to Crown.**]—(1) It is not a good defence to an action of tort brought by a friendly alien resident in the United Kingdom against an officer of the Crown in respect of the wrongful seizure & detention of the alien's property that the seizure & detention have been adopted & ratified by the Crown as an act of State.

Pltf., who was born in Ireland, having become a naturalised American citizen, returned to Ireland in 1916 & took part in the rebellion of Easter, 1916, & was interned. On his release he took part in illegal drilling, &, on being arrested in Ireland, a sum of money was found upon him, which was taken & detained by the police the seizure & detention being ratified by the Chief Secretary for Ireland. In an action by pltf. against the Chief Constr. of the Police for the recovery of the money, deft. pleaded that pltf. was an alien & that money was detained by direction of the Crown as an act of State:—*Held:* the plea was bad & pltf. was entitled to judgment.

(2) *Semble:* the fact that a subject of a friendly State residing within the realm under an implied licence from the Crown violates the local allegiance which he owes to the Crown does not disentitle him to the rights of an alien *any* until the Crown withdraws its protection.—JOHNSTONE *v.* PEDLAR, [1921] 2 A. C. 262; 90 L. J. P. C. 181; 125 L. T. 809; 37 T. L. R. 870; 65 Sol. Jo. 679; 27 Cox, C. C. 68, P. C.

Annotation:—As to (1) **Reld.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

66. *Add. Annotation:*—**Mentd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

69. *Add. Annotation:*—**Mentd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520.

70. *Add. Annotation:*—**Reld.** Rodriguez *v.* Speyer, [1919] A. C. 59.

79. *Add. Annotation:*—**Folld.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

85. *Add. Annotations:*—**Reld.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262. **Mentd.** Markwald *v.* A.-G., [1920] 1 Ch. 348; The Tervaete (1922), 128 L. T. 176.

94. *Add. Annotation:*—**Dbtd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

96. To the cross-reference after this case to Copyright Act, 1911 (c. 46), add "&, *generally*, COPYRIGHT, Vol. XIII., pp. 180–182."

v. C. [1922] App. D. 161.—
S. AF.

97. *Add. Annotations :*—**Mentd.** Markwald *v.* A.-G., [1920] 1 Ch. 348; Johnstone *v.* Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.

105. *Add. Annotation :*—**Mentd.** Seddon *v.* Commercial Salt Co., [1925] Ch. 187.

106. *Add. Annotation :*—**Mentd.** Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850.

114. *Add. Annotations :*—**Consd.** *Re* Lyne's Settlement Trusts, *Re* Gibbs, Lyne *v.* Gibbs, [1919] 1 Ch. 80. **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

116. *Add. Citations :*—Sty. 20, 40, 75; 1 Roll. Abr. 19b.

Add. Annotations :—*As to* (1) **Consd.** Du Hournelin *v.* Sheldon (1838), 1 Beav. 79; Barrow *v.* Wadkin (1858), 27 L. J. Ch. 129. **Refd.** A.-G. *v.* Sands (1670), Freem. Ch. 129; A.-G. *v.* Duplessis (1752), Park. 144; Burgess *v.* Wheate, A.-G. *v.* Wheate (1759), 1 Eden. 177; Rittson *v.* Stordy (1855), 3 Sm. & G. 230; Sharp *v.* St. Sauveur (1871), 7 Ch. App. 343. *As to* (2) **Refd.** Burgess *v.* Wheate, A.-G. *v.* Wheate (1759), 1 Eden. 177. *Generally*, **Mentd.** Cage *v.* Acton (1699), 12 Mod. Rep. 288.

140a. Member of Stock Exchange.]—By the rules of the London Stock Exchange each member is elected for one year only, & must come up for re-election annually under rule 21, which provides that the committee shall on the first Monday in March proceed (*inter alia*) to elect such members as they shall deem eligible to be members of the Stock Exchange during the following year commencing on Mar. 25 then instant. In 1917 an objection was lodged against the re-election of applt., who was a British subject naturalised in this country & denationalised in Germany, at the election to be held in March of that year, on the ground of his enemy birth. Upon the invitation of the committee applt., first in a letter & afterwards at an interview, set forth various facts in proof of his loyalty to the country of his adoption, but eventually the committee refused to re-elect him. Applt. impeached this decision on the ground that the committee had acted arbitrarily & capriciously & had been influenced by irrelevant considerations:- *Held:* the decision of the committee had proceeded solely upon the ground of applt.'s enemy birth, & before deeming him ineligible for re-election on that ground he had been given an opportunity of being heard. The committee having acted honestly & fairly in the exercise of their discretion & within their competence, it was not open to any ct. to review their decision.- WEINBERGER *v.* INGLIS, [1919] A. C. 606; 88 L. J. Ch. 287; 121 L. T. 65; 35 T. L. R. 399; 63 Sol. Jo. 461, H. L.

See, further, STOCK EXCHANGE.

Part III.—Aliens in Time of War.

144. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

146. *Add. Annotation :*—**Refd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753.

147. *Add. Annotations :* **Mentd.** Markwald *v.* A.-G., [1920] 1 Ch. 348; Johnstone *v.* Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.

154. *Add. Annotation :*—**Mentd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

155. *Add. Annotations :*—**Apld.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513. **Mentd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

156a. —— ——.] A man who, having a & commercial domicil in a neutral country, returns to his enemy country of origin & engages in active hostilities against this country, leaving his business under the care of a manager, but controlling it himself from his domicil of residence so far as he is able, cannot be considered anything but an enemy, & his business is an enemy firm & the assets are enemy property. THE ANTWERPEN, [1919] P. 252, n.; 89 L. J. P. 26, n.

Annotation :— **Mentd.** The Parana, [1919] P. 219.

156b. —— ——.]—An action was brought to recover a debt by a firm consisting of two French subjects & a German subject, & a sequestrator was subsequently appointed in t of the property of the German

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PART II. SECT. 7, SUB-SECT. 2.

129 i. *Right to hold & dispose—Law 3 of 1885—Act 35 of 1908—Company with Asiatic shareholders.*]—Law 3 of 1885 & Act 35 of 1908 do not apply to joint hold by Asiatics.—DADOO *v.*

S. AF.

PART II. SECT. 8.

132 i. *Civil office of trust—inspector.*]—The office of town inspector is one of trust which an alien is ineligible to hold.—R. *v.* HEIGHTON (1) (1922), 69 D. L. R. 386; 55 N. S. R. (G. & R.) 512.—**CAN.**

132 ii. *S. P.* R. *v.* HEIGHTON (2) (1922), 69 D. L. R. 396; 55 N. S. R. (G. & R.) 527.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

151 ii. —— ——.]—The subject of an alien State at war with His Majesty, who resides in the province of Quebec & has submitted to the laws of that country, is not an alien enemy.—RAGUSZ *v.* MONTREAL HARBOUR COMRS. (1916), 18 Q. P. R. 98; Q. R. 26 K. B. 57.—**CAN.**

155 i. —— *Place of residence & on trade.*]—"Enemy" a person, of whatever nationality, who resides or carries on business in enemy territory.—LAMPEL *v.* BERGER (1917), 40 O. L. R. 165; 38 D. L. R. 47.—**CAN.**

155 ii. —— whether a pe an determined not by his , but by th e or carries on business.—REVELSTOKE *v.* STREAMSTOWN RURAL MUNICIPALITY, No. 511, [1917] 3 W. W. R. 546; 37 D. L. R. 394;

215a. Treaties of Peace & consequent Orders—What property subject to charge under—Right to assessment of damages in collision action.]—Before the outbreak of war, defts., the German owners of the steamship *M.*, recovered judgment against the British owners of the steamship *K.* for the amount of the damage arising out of a collision between the two vessels, & the damages were referred to the registrar & merchants for assessment. Before defts. had filed their claim in the registry the war had broken out. A few days before the Peace Treaty was ratified the claim & vouchers were filed, but by consent they were treated as having been filed after the ratification. Thereupon pltfs. took out a summons for an order to set aside the filing & service of the claim & vouchers on the ground that under arts. 296 & 297 of the Treaty & Treaty of Peace Order, 1919, s. 1 (xvi & xvii), the parties had no right to litigate the claim in the registry, inasmuch as, being a debt owing to German nationals, it had to be settled through the intervention of clearing houses:- *Held:* (1) defts' claim was not a debt but a right, which by the Peace Treaty, art. 297, was subject to the right to be retained & liquidated "in accordance with the law of the allied State . . . concerned," namely, Great Britain; (2) not being a debt, art. 296 did not apply; (3) although defts. would not be able to handle the sum awarded, there was nothing in art. 297 or in Treaty of Peace Order, s. 1 (xvii) to deprive defts. of their right to proceed to a reference, or to prevent pltfs. paying money into ct. with a notice that it was in satisfaction of the claim of German subjects.—THE MARIE GARTZ, [1920] P. 172; 89 L. J. P. 206; 123 L. T. 680; 36 T. L. R. 417; 15 Asp. M. L. C. 98.

215b. [illegible] Debt Due to German.]—Clause [illegible] of the annex contained in the Sched. to Treaty of Peace Order, 1919, does not affect the rights of an individual British national to resist a claim by the Controller of the British Clearing Office to recover a debt which is admitted to be due to a German national, & is therefore an "enemy debt" within Treaty of Versailles & Treaty of Peace Order, 1919.—CLEARING OFFICE CONTROLLER v. EDWARDS & CO. (BREAD STREET), LTD., [1923] W. N. 215.

215c. [illegible] Trust estate Accumulations of [illegible] interest.]—*Re* CHAMBERLAIN'S CHAMBERLAIN *v.* CHAMBERLAIN, No. 49c,

215d. [illegible].]—*Re* HALLENSTEIN, HALSTED *v.* BLANK, No. 237c, *post.*

[illegible] Accumulations of annuities.]—By his will a testator, who died on Jan. 14, 1916, directed his exors. to pay annuities to an Austrian & two German nationals "until he or she shall die or mortgage or otherwise charge the same . . . or until the happening of any event whereupon the same if given to him or her absolutely would no longer be received by him or her for his or her benefit." No part of the annuities could be paid to the annuitants during the war by reason of Trading with the Enemy Amendment Act, 1914 (c. 12), but accumulations were retained by the exors., as no order was made under sect. 4 of the Act vesting the annuitants' interests in the custodian:—*Held:* (1) as the Act of 1914 only suspended payments to the alien enemies & did not determine the ownership & ultimate destination of their annuities, those annuities were not forfeited *ab initio;* (2) the annuities were forfeited & determined in the case of the German nationals as from Jan. 10, 1920, by the charge imposed by the Treaty of Peace with Germany & Treaty of Peace Order, 1919, & in the case of the Austrian national as from July 16, 1920, by the charge imposed by the Treaty of Peace with Austria & Treaty of Peace (Austria) Order, 1920; (3) the accumulations of the annuities until those respective dates became subject to the charges & payable therefore to the custodian or the administrator of Austrian property as the case might be.—*Re* LEVINSTEIN, LEVINSTEIN *v.* LEVINSTEIN, [1921] 2 Ch. 251; 91 L. J. Ch. 32; 126 L. T. 177; 65 Sol. Jo. 767.

Applied (3) **Followed.** *Re* [illegible] v. Chamberlain, [1921] 2 Ch. 5; *Re* Best v. Wertheim, [1922] 1 Ch. 31.

215f. [illegible].]—A testator, whose domicil was English, by his will directed his trustees to invest a certain sum in the Hamburg State Loan & from the income thereof to pay a number of annuities, &, as & when the annuities fell in, to apply the income & the capital so set free in accumulating a trust fund. That trust fund was also invested in the Hamburg State Loan. The annuitants, & those interested under the

[illegible] up
the [illegible] tion of six months f[illegible] the war, i.e., to Jan[illegible]

[illegible] in

[illegible]d or to be paid after June [illegible]re properly paid or [illegible]ie in t[illegible]nds of the custodian [illegible] debt d[illegible]

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[illegible] boy of a ter[illegible] at [illegible] outbreak of [illegible] in 191[illegible] an [illegible] bony, held a[illegible] a subject & [illegible] which had ter[illegible] It [illegible]. If so sent were dishonoured, no [illegible] were [illegible] to [illegible] so

[illegible] in [illegible] sers. Licences [illegible] the [illegible] hole period of the war were [illegible] to the London agency, empower[illegible]g it to carry on banking business [illegible]ison, to the extent of [illegible] completing [illegible] transactio[illegible]o [illegible] to [illegible]e assets [illegible] to its credit [illegible] far as the trans[illegible]actions won[illegible] in [illegible] been carried [illegible] [illegible]cy, which [illegible] debited the [illegible] with the [illegible] [illegible] said not be sent, to [illegible] [illegible] intimating the cr[illegible]. In [illegible] action on the bill [illegible] an [illegible] the Public Trustee against the Scottish acceptor.—*Held:* [illegible] on the bill was a [illegible]y [illegible] have been carried out through [illegible] London [illegible]y, the licences con[illegible] no [illegible]

215 i. [illegible] this [illegible] for 215 i. in original volume.

215b i. *Treaty of Pea[illegible]*
What property subject to "Debts"—What are.]
[illegible] of money with the National Trust Co. for investment in securities, repayment of which was guaranteed on dates which fell during the war; (2) not deposits in a savings bank & moneys invested with a loan co. to be withdrawn on notice & from the bank on presentment of the bank book; (3) not moneys deposited with a trust co. with instructions that all sums of capital & interest so received should be held by the co. to the credit of the owner until further advice.—SECRETARY OF STATE OF CANADA v. NEITZKE, SECRETARY OF STATE CANADA v. [illegible] D. L. R. 443; 62 S. C. R. 262; 20 Exch. C. R. 219.—**CAN.**

will in the trust fund, were German nationals: —*Held:* the interests of the beneficiaries under the will were charged under Treaty of Peace Order, 1919, as being "property, rights & interests" in the United Kingdom. —FAVORKE *v.* STEINKOPFF, [1922] 1 Ch. 174; *sub nom. Re* STEINKOPFF, FAVORKE *v.* STEINKOPFF, 91 L. J. Ch. 165; 126 L. T. 597.

215g. —— —— —— ——.]—Under the trusts of a marriage settlement of 1903 & in the events that had happened certain infant children, German nationals, were on Jan. 10, 1920, when the Peace Treaty came into operation, entitled contingently on attaining twenty-one or marrying to an annuity of £150 a year. If neither infant attained a vested interest the annuity passed to the husband, also a German national. The annuity was secured by the covenant of the wife's parents with the trustees, all British subjects, & was payable during the lives of the surviving covenantor & the surviving child, but the trustees were not to be liable for any loss occasioned by their neglect to enforce the covenant. The infants' contingent title accrued in possession on the wife's death on July 17, 1918, but the trustees had not enforced the payment of any instalment since then. The custodian having claimed the annuity, the trustees submitted the matter to the ct. The custodian had not obtained a vesting order:—*Held:* both the arrears & the contingent future instalments payable after Jan. 10, 1920, were property rights or interests within Peace Treaty Order, 1919, s. 1 (xvi), &, notwithstanding the infants' personal incapacity, were caught by the charge.—*Re* NEUBURGER'S SETTLEMENT, FORESHEW *v.* PUBLIC TRUSTEE, [1923] 1 Ch. 508; 92 L. J. Ch. 442; 129 L. T. 735; 67 Sol. Jo. 500.

215h. —— —— **Accumulations of annuities.**]—By his will dated Mar. 31, 1911, a testator bequeathed an annuity of £250 to an Austrian national "until he shall die or voluntarily or involuntarily alienate or encumber . . . the same." Testator died on Aug. 22, 1914, during the war. The annuity was therefore accumulated in the hands of his legal personal representative, who made the proper returns to the custodian under Trading with the Enemy Amendment Act, 1914 (c. 12), s. 3, but no vesting order was made under sect. 4. By Treaty of Peace (Austria) Order, 1920, the annuity & its accumulations were, as from July 16, 1920, charged in favour of the administrator of Austrian Property, to secure (*inter alia*) payment of debts owing by Austrian to British nationals:—*Held:* (1) the accumulations up to July 16, 1920, passed to the administrator of Austrian property; (2) the charge created by Treaty of Peace Order was not an involuntary alienation or encumbrance within the meaning of the will, so that the current annuity since July 1920, was not forfeited, but was payable to the administrator of Austrian property.—*Re* BIEDERMANN. BEST *v.* WERTHEIM, [1922] 1 Ch. 31, 91 L. J. Ch. 105; 38 T. L. R. 37; 66 Sol. Jo. 107; *on appeal*, [1922] 2 Ch. 771, C. A.

—— —— —— **Trust estate.**]—*See* Nos. 215e–215g, *ante*.

2151. —— —— **Shares in English company.**]—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., No. 49d, *ante*.

215j. —— —— **Property in England.**]—A person of dual nationality, who is a British subject by British law, having been born in England, & also a German subject by German law, is a "German national" within the Treaty of Peace with Germany, art. 297, & Treaty of Peace Order, 1919, giving effect to it, & is not entitled to have property in England belonging to him exempted from the charge created by sect. 1 (xvi) of that Order. KRAMER *v.* A.-G., [1923] A. C. 528; 92 L. J. Ch. 333; 129 L. T. 380; 39 T. L. R. 462; 67 Sol. Jo. 552, H. L.; *affg.* S. C. *sub nom.* FASBENDER *v.* A.-G., KRAMER *v.* A.-G., [1922] 2 Ch. 850, C. A.

Annotation:—**Reld.** *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

215k. —— —— —— **Subject to restraint on anticipation.**]—The charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi), upon all property, rights & interests in this country belonging to German nationals at the date of the coming into force of the Treaty of Versailles attaches to the interest of a married woman, who is a German national, in property in England settled upon her for life without power of anticipation, notwithstanding the restraint upon anticipation. PUBLIC TRUSTEE *v.* WOLF, [1923] A. C. 511; 92 L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.; *revsg.* S. C. *sub nom. Re* RUSH, WARRE *v.* RUSH, [1923] 1 Ch. 56, C. A.

Annotations: **Reld.** *Re* Neuburger's Settlmt., Foreshew *v.* Public Trustee, [1923] 1 Ch. 508. **Mentd.** Morgan *v.* Morgan & Kirby, [1923] P. 1, Parr *v.* A. G., [1926] A. C. 239.

2151. —— —— —— **Belonging to foreign bank in liquidation.**]—Plffs. were the receivers of the Austro-Hungarian Bank appointed by the Reparations Commission under Treaty of Peace with Austria, art. 206, & entrusted with the duty of liquidating the bank for the purpose of distributing the liability on the currency notes of the bank among the several States among which the territory of the former Austro-Hungarian monarchy had been divided. Art. 219 of that Treaty provided that "subject to any contrary stipulation" in the Treaty, the British Govt. might retain & liquidate the property in this country of "nationals of the former Austrian Empire" which expression, as the ct. found, included the Austro-Hungarian Bank, & charge it with the payment of claims by

215i. —— —— *Bearer shares & debentures in Transvaal mining company.*]—RANDFONTEIN ESTATES GOLD MINING CO., LTD. *v.* CUSTODIAN OF ENEMY PROPERTY, [1923] App. D. 576.—**S. AF.**

215j. —— —— *Property in Australia—Subject to restraint on anticipation.*]—The words "all property, rights & interests" appearing in cl. 4 of the annex to art. 297 of the Treaty of Peace between the Allied Powers & Germany are wide enough to include an estate for being a fi coverture subject to a restraint ticipation.—COWPER *v.* FRANKS (1921), 21 S. R. N. S. W. 388.—**A**

sd. —— —— *Rights of nationals in te property.*]—The rights of na- tionals in testator's property of by his will are subje to the of Jan. (1). 81. R. Qd. 39.—**AUS.**

—— *Rights acquired under realties made under Trading with t*

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British nationals in respect of (*inter alia*) debts due to them by Austrian nationals. By the same article Austria undertook to compensate her own nationals for the retention of & charge upon their property. Defts. were the custodian of enemy property in this country & the administrator appointed by Order in Council to liquidate the property of Austrian nationals in this country & administer the above-mentioned charge. Plffs. claimed that art. 206 was a "contrary stipulation" within art. 249, that the property of the bank in this country was consequently not subject to the charge, & that they & not defts. were entitled to administer that property:—*Held:* there was no inconsistency between the two articles, which dealt with different subject matters, the only effect of art. 249 upon the liquidation under art. 206 being to replace the assets of Austrian nationals in this country by assets of equal value in Austria if the Austrian Govt. carried out its undertaking, & the action must be dismissed.—LUXARDO *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 147; 93 L. J. Ch. 425; 131 L. T. 200; 40 T. L. R. 516; 68 Sol. Jo. 737, C. A.

215m. —— —— —— **Policy money—Payable in England.**]—Plff. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London, & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were ex- to be payable in London, but all s were payable either at the central office in New York or at the office where the insurance was payable & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law. In an action to determine whether the policy moneys payable under the policies in question, which had matured on or before Jan. 10, 1920, the date when the Treaty of Peace with Germany came into force, were "property, rights & interests within His Majesty's Dominions" belonging to German s, & as such were subject to the charge by Treaty of Peace Order, 1919, s. 1 (xvi):—*Held:* (1) there was nothing in art. 280 of s. V of the Peace Treaty, or in par. 11 of the annex thereto, to indicate that the property, rights, & interests of the assured under such contracts were to be excluded from the general charge under par. 4 of the annex to s. IV.; (2) inasmuch a corpn. might have a dual residence, & both in New York & in London carrying on business in both places & in both places being subject to the jurisdiction of the cts., it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be Applying that test in the present case, the debts were recoverable in London where they were expressed to be payable, &, that being so, they were situate within His Majesty's Dominions & became subject to the charge.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

Annotation:—As to (2) **Reid.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255.

215n. —— —— **Share of enemy partner in firm.**]—So far as English law is concerned one partner in a firm who purchases the share of an enemy partner therein during hostilities acquires no fresh right & has no fresh remedy as a result of such purchase. Such enemy's interest in the concern still falls within the category of "property, rights, & interests" subject to the charge created by Treaty of Peace Order, s. 1 (xvi) for the purpose of giving effect to art. 297, & by Treaty of Peace Orders, s. 1 (xvii) (ccc) is payable to the administrator of German property.—FRIED *v.* GERMAN PROPERTY ADMINISTRATOR, [1925] Ch. 757; 95 L. J. Ch. 4; 134 L. T. 69 Sol. Jo. 707.

215o. —— **Joint decisions of Clearing Offices—Effect.**]—In 1913 defts. had entered into contracts with German sellers for the purchase of a quantity of nitrate, delivery of which was to be made to defts.' agent alongside the vessel at Iquique, & payment for which was to be made in London after presentation of bills of lading. Several cargoes were shipped, but war broke out before the vessels arrived at their destination & before the bills of lading, which were made out to order, could be presented. In these circumstances defts. procured delivery to their sub-purchasers by giving an indemnity to the ships, & presumably received payment for the nitrate from their sub-purchasers. After an interval the German sellers duly notified their claim for the price of the nitrate & for interest to the German clearing office, which in turn passed it on to the British clearing office. Defts. were prepared to pay what the Germans claimed as the price of the goods, though they disputed the existence of any debt, either in the strict legal sense or in the sense in which the expression is used in Treaty of Peace, art. 296, & they disputed the claim for interest. As the Treaty only contemplated the admission of debts, & defts. were prepared to pay the amount claimed as the price of the goods, the British clearing office admitted the debt, & the principal money was cleared in 1923. At a later period the claim for interest was again put forward. This claim defts. still disputed, but the two clearing offices arrived at a joint decision that interest was payable upon the principal sum admitted by the British clearing office. Notice of the decision was conveyed to defts. in a letter dated Sept. 13, 1923. The decision took the form of an intimation that the British & German clearing offices had jointly agreed that interest in accordance with par. 22 of the annex to sect. III. of Part X. of the Treaty was payable upon the admitted debt at the rate of 5 per cent. *per annum* calculated from dates specified. The notice then continued as follows: "In default of a notice of appeal under r. 22 of the Rules of Procedure of the Anglo-German

Mixed Arbitral Tribunal, the interest on the said sum of . . . at the rate of 5 per cent. from (the date named) to the date of crediting & advice to the German clearing office will be credited by the British clearing office to the German clearing office." No appeal was brought, &, after the expiry of the time for appealing, pltf., the controller of the British clearing office, sought to enforce this joint decision by action on the ground that a joint decision unappealed from should, on a true construction of the Peace Treaty, be regarded in the same light as if it was a foreign judgment, or the award of an arbitrator, & should, therefore, be enforced by the cts. of this country on the same principle as either a foreign judgment or an award is enforced :—*Held :* under Treaty of Peace, art. 296, as carried out by Treaty of Peace Act, 1919, & Treaty of Peace Order, 1919, the joint decisions of the clearing offices were not in the nature of judgments or of awards under an arbn., so as themselves to be enforceable by action, & therefore the action failed. —CLEARING OFFICE CONTROLLER v. WEIR & CO. (1925), 95 L. J. K. B. 88; 133 L. T. 701; 41 T. L. R. 603; 69 Sol. Jo. 809; 22 Lloyd, L. R. 280, C. A.; *affd.* (1926), 135 L. T. 705; 42 T. L. R. 697, H. L.

215p. —— **Action against administrator—Whether Attorney-General necessary party.**] — The A-G. is not a necessary party to an action against the administrator of Hungarian property in which the substantial claim was against the fund, & a subsidiary claim for a declaration as to nationality was added.—GROEBEL *v.* HUNGARIAN PROPERTY ADMINISTRATOR (1925), 70 Sol. Jo. 345.

219. *Citations* :—For "*Re* HEGELBERG" read "*Re* HAGELBERG."

219a. —— —— ——.]—The controller of the London agency of an enemy bank appointed under the above Act ought not in the absence of special circumstances to pay (1) non-enemy holders of cheques drawn before or after the outbreak of war by enemy customers; (2) non-enemy holders of cheques drawn before or after the outbreak of war by non-enemy customers; (3) pre-war acceptances of customers, whether enemy or non-enemy, of the London branch, or of other persons domiciled for payment at the London branch.

(4) Where cheques are drawn by the head office or any enemy branch on the London branch payable to non-enemy persons, claims in respect thereof must not be met without the direction of the judge.—*Re* DRESDNER BANK (LONDON AGENCY) (1920), 64 Sol. Jo. 426.

219b. —— —— —— **Effect of Treaty of Peace.**]—(1) The provision contained in sect. 1 (3) of the above Act continues in force after the coming into operation of the Treaty of Peace of June 28, 1919.

2) The date at which the enemy or non-enemy character of creditors is to be determined is the date of the winding-up order.—DEUTSCHE BANK (LONDON AGENCY), [1921] 2 Ch. 30; 90 L. J. Ch. 406; 126 L. T. 20; 37 T. L. R. 559; 65 Sol. Jo. 492; *subsequent proceedings*, [1921] 2 Ch. 291.

219c. —— —— —— **Who are creditors.**]—On the outbreak of war three enemy banks in the City were closed, but were afterwards re-opened under licence. Ultimately the Board of Trade made orders under the above Act winding up the businesses, & a controller was appointed for that purpose. The controller gave the managers notice purporting to terminate their contracts under which they were entitled to a year's notice, & the contracts being subject to German law were not determined by the outbreak of war. The managers took out summonses claiming payment of their salary monthly after the date of the notice, or damages for wrongful dismissal :—*Held :* the claims for salary & for damages were not debts of a London business payable under the above Act, & the applicafailed.—*Re* ANGLO-AUSTRIAN BANK, SDNER BANK, *Re* DIRECTION DER DISCONTO GESELLSCHAFT, [1920] 1 Ch. 69; 89 L. J. Ch. 86; 121 L. T. 640 35 T. L. R.

Consd. *Re* Vulcaan Coal Co., Hart Harbottle, [1922] 2 Ch. 60.

220. *Add. Annotations :* **Consd.** Meyer v. Faber (No. 2), [1923] 2 Ch. 421. **Refd.** *Re* Vulcaan Coal Co., Harrison v. Harbottle, [1922] 2 Ch. 60.

221. *Add. Annotations :* **Refd.** *Re* Dieckmann (1917), 117 L. T. 713; Meyer v. Faber (No. 2), [1923] 2 Ch. 421.

221a. — — — — **Liability of third party to put business in funds to meet bills.**]—In June, 1914, defts. by their Paris branch, drew ten bills of exchange, payable in London three months after date, on the Dresdner Bank. The Dresdner Bank accepted the bills at their London branch & received as security Russian promissory notes. Defts. provided no funds to meet the bills when they fell due &, under an arrangement between the Treasury & the Bank of England, the amount payable was discharged by the Bank of England. By 1917 the Dresdner Bank in London had repaid the sum due for principal & interest to the Bank of England. In 1918 the Board of Trade, under the above Act, ordered the business carried on by the esdner Bank in London to be wound up, appointed a controller to wind up the ..... as, with power to collect all moneys owing to the bank & to bring actions in the name of the bank : *Held :* (1) the transaction was part of the "business" of the London branch of the Dresdner Bank; defts.' liability to put the Dresdner Bank in funds to meet the bills was an asset of the London branch within the above sect., even if the London branch accepted the bills on the instructions of the head office in Berlin & debited the current account of the head office with the amount paid on the bills, & defts. were liable to repay pltfs. the money

III. SECT. 2, SUB-SECT. 2.—B. (a).

223 l. *Amending Act of* 1916, *s.* 1—*Business ordered to be wound up—Sale of stock—Rights of consignors of stock on sale or return.*]—The of an alien enemy ordered to be wound up, ication by the controller under the —— sect. :—*Held :* he was entitled to sell the whole stock, but if there liable consignments of on sale or return from he must return or store them at signor's expense.—*Re* THOMSON, M'LINTOCK, [1918] 1 S. L. T. 1 SCOT.

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paid by them to the Bank of England in respect of the bills with simple interest at 5 per cent. on each instalment from the date of payment; (2) the action by the controller in the name of the Dresdner Bank (London y) was not an action in the name of a of that bank but an action in the name of the Dresdner Bank, & the addition of the words "London Agency," being merely descriptive, did not change pltfs. from being the Dresdner Bank into something unknown to the law as a legal person.—DRESDNER BANK v. RUSSO-ASIATIC BANK, [1923] 1 Ch. 209; 92 L. J. Ch. 204; 128 L. T. 633; 67 Sol. Jo. 277.

Generally, **Mentd.** Russian Commercial & Bank v. Comptoir D'Escompte de Mulhouse, [1923] 2 K. B. 630.

222. *Add. Annotation:* **Reld.** Meyer v. Faber (No. 2), [1923] 2 Ch. 421.

223. *Add. Annotations:*- **Reld.** *Re* Vulcaan Coal Co., *Harrison v. Harbottle*, [1922] 2 Ch. 60; *Meyer v. Faber* (No. 2), [1923] 2 Ch. 421.

223a. — — — **Action in name of business — Addition of words "London Agency."**]—DRESDNER BANK v. RUSSO-ASIATIC BANK, No. 221a, *ante*.

223b. — — — — **After Treaty of Peace.**]—The Treaty of Peace with Germany, art. 296, which declared that enemy debts as therein defined were to be settled through clearing offices to be established after the treaty came into operation, & the annex to that article, are qualified by art. 297, & the latter article & its annex cannot be construed as limited to a confirmation of what has been done under "exceptional war measures" prior to the coming into force of the Treaty, but must be held to validate all acts & procedure done thereafter in the execution of such exceptional war measures.

Where an action was brought four months after the coming into force of the Treaty of Peace by the controller with the sanction of the Board of Trade, in the name of enemy subjects formerly carrying on business in London, to recover assets of the business alleged to be in the hands of deft.: *Held:* the action was properly brought; & a motion by deft. to stay the proceeding on the ground that it was prohibited by the Treaty of Peace was dismissed. MEYER & CO. v. FABER, [1921] 2 Ch. 226; 91 L. J. Ch. 233; 125 L. T. 331.

223c. — — **General position of controller.** *Re* VULCAAN COAL CO., HARRISON v. HARBOTTLE, No. 223f, *post*.

223d. — — — — At the outbreak of war in 1914, a British subject, resident in England, & three German subjects, resident in Germany, were carrying on business in partnership in London. The outbreak of war having dissolved the partnership, the British partner with the sanction of the Home Office proceeded to wind up the business. He got in a large sum of money, representing assets of the business, & discharged nearly all the liabilities, & had a balance in hand. The controller, appointed in 1918 under Trading with the Enemy Acts, 1916 (c. 1918 (c. 31), sued, in the name of the ... the British partner for the balance of ...s. Deft. contended that he had himself cl... against the business, & that he was entitled to the taking of partnership accounts to ascertain those claims before paying over the assets:—*Held:* under the Acts, the controller had not the powers of a trustee in bkpcy., his outside powers being those of a liquidator in a voluntary winding up, & he could not therefore override the ordinary law of partnership which entitled deft. to the taking of accounts between himself & the other partners.—MEYER & CO. v. FABER (No. 2), [1923] 2 Ch. 421; 93 L. J. Ch. 17; 129 L. T. 490; 39 T. L. R. 550; *sub nom.* MEYER & CO. v. FABER, MEYER & CO. v. ELDER, 67 Sol. Jo. 576, C. A.

223e. — — — — **Dismissal of manager by controller —Claim by manager for salary & damages for wrongful dismissal.**]—*Re* ANGLO-AUSTRIAN BANK, *Re* DRESDNER BANK, *Re* DIRECTION DER DISCONTO GESELLSCHAFT, No. 219c, *ante*.

223f. — — — — — — — — **Claim by manager to retain money as against controller.**]—A controller appointed by the Board of Trade under sect. 1 (1) of the above Act to wind up the English business of an enemy co. or firm, does not represent the co. or firm. His duties are to get in the assets & discharge the liabilities of the business.

By an agreement, dated Mar. 28, 1913, H. was engaged as manager of the Newcastle branch of a German co. registered in Holland until June 30, 1918, at a salary of not less than £1,000 *per annum*. On Aug. 14, 1916, the Board of Trade made an order to wind up the business & appointed a controller under sect. 1 (1) of the above Act. On Aug. 31, 1916, the controller dispensed with the services of H. At that date H. had in his possession certain moneys of the business, which he claimed to retain, as against the controller, to satisfy his claim for damages for breach by the co. of the agreement:—*Held:* the claim was against the co., & not against the business, & H. was not entitled to retain the moneys as against the controller.—*Re* VULCAAN COAL CO., HARRISON v. HARBOTTLE, [1922] 2 Ch. 60; 91 L. J. Ch. 491; 127 L. T. 274; 66 Sol. Jo. 423.

Annotation:- **Dbtd.** Meyer v. Faber (No. 2), [1923] 2 Ch. 421.

223g. — — — — **Sale of business by controller— Damages for breach of contract.**]—At the outbreak of war the majority of the shares in M. Co., carrying on business in the United Kingdom, were held by, & the majority of the directors were, alien enemies. A controller of the co. was appointed. By the appointment of new directors the co. came under British management. In Dec. 1915, M. Co. agreed to sell, & F. Co. to buy, the whole output of M. Co. until six months after the declaration of peace between England & Germany. In 1919 the Board of Trade, under the above Act, ordered the business of M. Co. to be wound up & the controller sold the business:—*Held:* although at the

Held: ... 91 of the 1914 ... the Minister for ... s to confer upon a cont... under which the right of that controller to apply to the High Ct. ... by the ... laid ... with regard to similar applications by a liquidator.—BROKEN HILL v. WARNOCK (1... C. L. R. 362.—**AUS.**

sk. *Enemy Trading Act, X of —Business ordered to be wound up —Powers of controller.*)—WOLF v. DADYBA (1919), I. L. R. 44 Bom. 631.—**IND.**

outbreak of war M. Co. became an alien enemy, yet its business could be lawfully carried on under new non-enemy management even if enemy shareholders might after the war benefit by such trading, &, although it was in consequence of the winding-up order that M. Co. was unable to carry out its contract, it was liable in damages to F. Co. for breach of contract.—*Re* BRITISH INCANDESCENT MANTLE WORKS, LTD. (1923), 129 L. T. 126; 39 T. L. R. 244; 67 Sol. Jo. 517.

224. *Add. Annotations:*—**Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60; Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

226. *Add. Citation:*—[1917] H. B. R. 243.

235a. **To wind up partnership—Parties.**]—At the outbreak of war three German subjects were carrying on business in London in co-partnership with F., their English partner. Under the partnership articles F. was the managing partner in London, & on the dissolution by the declaration of war he carried on the business & collected the assets with the view of liquidation. No accounts had been taken between the partners since Dec. 31, 1913. F. died in 1920, & deft. was his legal personal representative. By an order of the Board of Trade it was ordered that all the property, rights, & interests of the three German partners in the assets of the firm in respect of any claim against the English partner, or his estate, should vest in pltf., who should take all necessary proceedings to collect what might be due to the German partners. In an action by pltf. as custodian of enemy property with the object of winding up the partnership he claimed an account against deft. of all dealings between the German partners & the English partner, including all dealings with the partnership assets since the dissolution, payment of what should be found due, & an inquiry of what the partnership property consisted. The German partners were not added as pltfs. in the action:—*Held:* in the absence of the German partners as parties to the action no such relief as was asked could be granted, & the action failed.—PUBLIC TRUSTEE *v.* ELDER, [1926] Ch. 776; 95 L. J. Ch. 519; 135 L. T. 589, C. A.

236. *Add. Annotation:*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

236a. —— —— —— —— **Effect of Treaty of Peace & consequent Orders.**]—By Treaty of Peace Act, 1919 (c. 33), Treaty of Peace Order, & the Treaty of Peace with Germany, the power conferred by Trading with the Enemy Amendment Act, 1914 (c. 12), s. 5 (2), on the ct. to authorise the custodian to pay out of property paid to him in respect of an enemy debts due by that enemy, has, so far as concerns pre-war debts due by German nationals to British nationals, come to an end. Payment of such debts can now be made only through the clearing office established under s. III. of Part X. of the Treaty.—*Re* NIERHAUS, [1921] 1 Ch. 269; 91 L. J. Ch. 107; 36 T. L. R. 425; 64 Sol. Jo. 426.

Annotation **Refd.** *Re* National Bank für Deutschland, Bank, [1921] 1 Ch. 284.

236b. —— —— —— ——

NATIONAL BANK FÜR DEUTSCHLAND, *Re* ANGLO-AUSTRIAN BANK, [1921] 1 Ch. 284; 90 L. J. Ch. 15; 123 L. T. 647.

237. *Add. Annotation* :—**Follld.** Dresdner Bank *v.* Russo-Asiatic Bank, [1923] 1 Ch. 209.

237a. —— —— **Release of funds in favour of British creditors—Mode of distribution.**]—Funds were released by the custodian of enemy assets in this country from his charge upon them under the Treaty of Peace Orders, the release being expressly limited in favour of creditors of British nationality. There were no German creditors, but there were some foreign creditors. Upon the trustee's application for directions:—*Held:* the ct. would direct the funds to be distributed according to Bkpcy. Act, 1914 (c. 59), but would give the custodian an opportunity of being heard, if he so wished, before the order was drawn up.—*Re* WISKEMANN, *Ex p.* TRUSTEE (1923), 92 L. J. Ch. 349; [1923] B. & C. R. 28.

237b. —— **Right to dividends—On shares held by alien enemies.**]—An English co. had certain alien enemy shareholders & certain assets in Germany. From time to time after the outbreak of the war with Germany, resolutions were passed by the directors & by the co. in general meeting declaring *interim* & final dividends respectively, subject in each case to a condition that as regards members of the co. resident in Germany, Austria & Turkey, the dividend should be payable only out of assets in Germany, & as regards members resident elsewhere out of assets in England. By an order made on Aug. 24, 1916, under sect. 4 (1) of the above Act, it was ordered that the right to transfer the shares held by alien enemies & to receive any dividends "now due & to accrue due thereon" vested in the custodian, & the shares were transferred into his name in due course:—*Held:* the resolutions, so far as they provided for payment only out of assets in Germany, were void as against the custodian, & the co. was liable out of any assets in its hands to pay him the amounts of the dividends, whether declared before or after the vesting order.—ARAMAYO FRANCKE MINES, LTD. *v.* PUBLIC TRUSTEE, [1922] 2 A. C. 406; 91 L. J. Ch. 613; 127 L. T. 661; 38 T. L. R. 756; 66 Sol. Jo. 611, H. L.; *affg.* S. C. *sub nom. Re* ARAMAYO FRANCKE MINES, LTD., [1921] 1 Ch. 675, C. A.

237c. —— —— **Part of trust income—Payable to enemy.**]—(1) *Held:* sect. 2 (1) of the above Act related only to moneys payable under contractual obligations arising out of loans, partnership or membership of a co., & not to trust income payable by trustees to an enemy even when the income was derived from dividends on shares.

(2) By his will a testator, who died in 1904, bequeathed his estate upon trusts whereby the residue & the proceeds of sale t
were to go in equal shares to his children; he directed his trustees to retain the
of each of his daughters upon trust during the life of the daughter to pay the annual income to her for her separate use without power of anticipation & until she should do or suffer any act or thing whereby the same, if payable to her absolutely or any part might have become payable or forfeited to or vested in any other person. In the event of a forfeiture under this provision the income was given upon a discretionary trust during the remainder of the life of the daughter,
daughter's share was to be held in trust for her children & issue as therein mentic
One of the testator's daughters had i
married with a German in 1908, & had since resided in Germany. Since the coming into force of the above Act, the trustees had accumulated the income of her share, which amounted on Jan. 10, 1920, the date of the ratification of the Treaty of Peace with Germany, to about £4,000:—*Held:* the daughter's life interest was not determined on the coming into force of the above Act, but ceased on Jan. 10, 1920, by reason of the Treaty of Peace charge, & the accumulations of income up to that date were subject to the charge.—*Re* HALLENSTEIN, HALSTED *v.* BLANK, [1922] 1 Ch. 355; 91 L. J. Ch. 420; 127 L. T. 58; 38 T. L. R. 313; 66 Sol. Jo. 299.

237d. **Liability of custodian for super tax.**]—Property belonging to an enemy which is paid to or vested in the custodian under the above Act is, pending its disposition by Order in Council after the termination of the war, removed from the control & beneficial ownership of the enemy. During the interval the beneficial ownership is in statutory suspense or abeyance, the custodian having meanwhile limited powers of dealing with the property.

When war broke out in 1914, M., an enemy within the Act, owned real estate in England & shares & securities in British cos. By orders under sect. 4 of the Act the real estate, shares & securities were vested in the custodian. The Special Comrs. for Income Tax assessed the custodian to super tax as agent or receiver for M. The custodian disputed the legality of the assessment:—*Held:* (1) M.'s beneficial ownership of the property having ceased on the making of the vesting orders, the profits & gains received by the custodian were received by him in respect of M., but did not in his hands belong to M.; he did not receive or hold them as agent or receiver or trustee for M. within 5 & 6 Vict. c. 35, s. 41, &, therefore, he was not liable to be assessed to super tax; (2) as M. could not, after the war, ask to receive back the property except on the footing that a sum equal to the amount of super tax which, but for the war, he would have been liable to pay was paid, the custodian must, under the discretion given to the ct. by sect. 5 (1) of the Act of 1914, pay that sum to the Comrs. as analogous to payment of a debt under sect. 5 (2).—*Re* M'ENSTER, [1920] 1 Ch. 268; 89 L. J. Ch. 138; 36 T. L. R. 173; 64 Sol. Jo. 309.

As to (1) **Refd.** *Re* Ferdinand, of 1 Ch. 107.

239a. —— —— **Application to court—Rectification of register of shareholders.**]—Shares belonging to an alien enemy were after the declaration of war vested in the Public Trustee & sold by him. A four-day order was obtained, directing the co. to rectify the register of members, but that order was not complied with. The solrs. to the co. stated in corre-
they had the books of the co.,

but that all the directors & secretary had resigned :—*Held :* the Public Trustee was entitled to an order to carry out the transfer of the shares.—*Re* MANIHOT RUBBER PLANTATIONS, LTD. (1919), 63 Sol. Jo. 827.

240. *Add. Citation :*—[1918–19] B. & C. R. 171. *Add. Annotations :*—**Refd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421. **Mentd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

241. *Add. Annotations :*—**Consd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753 ; *Re* Deutsche Bank (London Agency), [1921] 2 Ch. 291.

250. *Add. Annotations :*—**Mentd.** Markwald *v.* A.-G., [1920] 1 Ch. 348 ; Johnstone *v.* Pedlar, [1921] 2 A. C. 262 ; The Tervaete (1922), 128 L. T. 176.

253. *Add. Annotations :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Mentd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

254. *Add. Annotations :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59 ; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107. **Mentd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262 ; *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

256. *Add. Annotations :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59 ; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

257. *Add. Annotation :*—*As to* (2) **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

259. *Add. Annotations :*—**Folld.** Krauss *v.* Krauss & Orbach (1919), 35 T. L. R. 637. **Refd.** Procurator in Egypt *v.* Deutsches Kohlen Depot Gesellschaft, [1919] A. C. 291.

260. *Add. Annotations :*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107 ; *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513. **Mentd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

261. *Add. Annotation :*— **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

261a. —— —— **Suit for dissolution of marriage.**]—An alien enemy, who has been registered as such & is domiciled in England, has a ri to bring a petition for the dissolution of marriage.—KRAUSS (OTHERWISE DES SALLES D'EPINOIX) *v.* KRAUSS (OTHERWISE DES SALLES D'EPINOIX) & ORBACH (1919), 35 T. L. R. 637 ; 63 Sol. Jo. 760.

272. *Add. Annotation :*—**Mentd.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 120 L. T. 386.

276. *Add. Annotation :*—**Refd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67.

280. *Add. Annotations :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Mentd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107 ; Johnstone *v.* Pedlar, [1921] 2 A. C. 262 ; *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

Delete the cross-reference following this c

280a. **Effect of peace—Treaties of Peace & consequent Orders—Right to sue after restoration of peace—Cause of action arising during war.**]—In an action for infringement defts. alleged (*inter alia*) that, at all material times, pltf. had been residing or carrying on business in Germany ; that, having regard to the Treaty of Peace, art. 309, or, alternatively, under the common law, he could not sue ; & that, at the dates of the alleged infringements, the patent had been vested in the custodian under Trading with the Enemy Amendment Act, 1916 (c. 105), & pltf. could not maintain the action :—*Held :* pltf. could not maintain the action because (1) at the date of the alleged infringement, he had been a "hostile person" within the General Vesting Order made under Trading with the Enemy Amendment Act, 1916, & the patent had been vested in the custodian, & the Divesting Order had not transferred to pltf. a right of action that had accrued to the custodian ; (2) the case fell within the Treaty of Peace, art. 309.—WILDERMAN *v.* BERK (F. W.) & Co., [1925] Ch. 116 ; 94 L. J. Ch. 130 ; 132 L. T. 534 ; 41 T. L. R. 50 ; 42 R. P. C. 79.

——.] *See, also,* original volume, Nos. 202, 269, 270

288. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

291. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

PART III. SECT. 2, SUB-SECT. 3.—A.

250 vii. —— *Plaintiff compelled to sue to establish caveat.*]—An alien enemy, unless he be within the realm by the licence of the King, cannot sue in our cts. either by himself or by any on his behalf until peace is

Where a municipality, having sold land for taxes, serves notice on the owner to take proceedings on a *caveat*, thereby compelling him to to establish it, the owner, if an enemy, should be treated, to extent at least, as in the position of an alien enemy who is deft. to an action. Therefore the action should not be dismissed on the ground that pltf. is an alien enemy, for therefrom a discharge of an order continuing the & a discharge of the *caveat* follow.—REVENLTOW-CRIMINIL PALITY, No. 511, [1917] 3 W. W. R. 546 ; 37 D. L. R. 394 ; *affd.*, [1920] 1 W. W. R. 578 ; 52 D. L. R. 15 Alta. L. R. 204.—**CAN.**

250 viii. ——.]—An alien cannot enforce civil rights in a British ct. during the period of hostilities.—SIBISI *v.* HERMANSBERG SOCIETY (1916), 37 N. L. R. S. AF.

256 i. For "Pro of 13, 1914" read "Proclamation August 15, 1914."

256 iv. —— —— ——.]—An al resident in Ontario, although country is at war with ours, so he conducts himself peaceably, & is within the above Proclamation, is entitled to bring & maintain an action in any ct. in Ontario.—KRISTO *v.*

s), 41 R. O. W. N. 200 —**CAN.**

256 v. —— —— *Christian Ar-*—The cts. of the province of are open to a Christian Ar-

Order in Council of Nov. 20, 1914. R. 179.—**CAN.**

11. *Action under tion Act.*]—An actio under above Act, for th of the mot of deceased an alien en cannot be].—CREMIDAS *v.* BRITISH COLUMBIA ELE [1919] 2 W. W. R. 519.—**CAN.**

274 iii. —— ——] *Act.*]—PERLMAN *v.* PICHE (1916), Q. R. 54 S. C. 170 ; 41 D. L. R. 147 ; 24 R. de J. 435.—**CAN.**

.]—A man of Aust Ho an nationality came to e outbreak of the war, an alien enemy. In e law, he left Canada d, & on his return was fined. In Dec. 1917, under the Immigration for without an & (was a writ of on not, an ct. (2) he was not within ion conferring juris-rudence ; (3) had within the tion of the ion, he violation of the t upon tion of of 29 (O. 547 ; 13 O. W. N. 341.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—C.

292 ii. ——.]—An alien enemy, w d by a h ct. is e to te.—U K v. V. L. . 415.—**AUS.**

iii. — .]—An alien enemy

293. *Add. Annotations :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Mentd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Johnstone *v.* Pedlar, [1921] 2 A. C. 262; Re Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

295. For "but not to a counterclaim," read "but not a counterclaim."

297. *Add. Annotations :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Mentd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Johnstone *v.* Pedlar, [1921] 2 A. C. 262; *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

302. *Add. Annotations :*—**Mentd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *v.* Pedlar, [1921] 2 A. C. 262; *Re* , Bechoff *v.* Bubna (1921), 65

303. *Add. Annotations :*—**Consd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107. **Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456. **Mentd.** *v.* Akt. für Cartonnagen Industrie, [1918] A. C. 239

304. *Add. Annotations :* **Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Refd.** Ertel Bieber *v.* Rio Tinto Co., etc., [1918] A. C. 260; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

306. *Add. Citations :*—[1919] A. C. 59; 88 L. J. K. B. 147, H. L.

Add. Annotation :—**Mentd.** Valentine *v.* Hyde, [1919] 2 Ch. 129.

310. *Add. Annotation :*—*As to* (1) **Apprvd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

313. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

315. *Add. Annotation :*—**Mentd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

316. *Add. Annotations :*—*As to* (1) **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59. *As to* (2) **Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

318. *Add. Annotation :*—**Refd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753.

320. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

322. *Add. Annotation :*—*As to* (1) **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

329. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

Part IV.—Trading and Communicating with the Enemy.

332. *Add. Annotations :* **Mentd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331; Sarga *v.* Paterson (1923), 129 L. T. 471; Akt. *v.* Arcos (1926), 42 T. L. R. 737.

337. *Add. Annotation :*—**Mentd.** The Prins der Nederlanden, [1921] 1 A. C. 751.

346. *Add. Annotation :* **Mentd.** The Regina d'Italia, [1925] P. 123.

347. *Add. Annotation :* **Consd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

351. After the words "was void" at the end of the paragraph in original volume add "; (2) in the circumstances the indorsement to pltf. conveyed to him a legal title in the bills, on which he might sue after the return of

Add. **Mentd.** *Re* Fer
Ex-T [1921] 1 Ch. 107.

357. *Add.* **Mentd.** *Re* Ferdinand,
of , [1921] 1 Ch. 107.
and
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Where a municipality served w
ner of land, sold for
take proceedings on a *caveat*, t
ain to proceed to c
the owner, being an alien
be treated as being in
the position of an alien enemy defendi
ing an action, & the action should not
be dismissed. DEVLIN TOWN COMMRS.
v. STREAMSTOWN RURAL MUNICIPALITY, [1920] 1 W. W. R. 577; 52 D. L. R. 266; 15 Alta. L. R. 204, *affd.*, [1917] 3 W. W. R. 546; 37 D. L. R. 391 — CAN.

PART III. SECT. 2, SUB-SECT. 3.—D.

304 i. *by partnership*—
If one of the
In a firm is an alien enemy, who does
to the firm.—HAJI AB JON *v.* ABDUL JABB KHAN (1920), I. L. R. 1 Lah. 276.—IND.

PART IV. SECT. 3, SUB-SECT. 1.

390 i. "*Act B.*," s. 6—*Assignment of debt in action to British firm—In nature of debt.*]—An Austrian firm debted to a London firm at the Sept. 25, 1914, the Austrian firm w a letter purporting to be an as ment to the London firm of a debt to them by B. The letter enclosure gned by the Austrian firm to B. amounting to a of the debt. In the the firm forwarded it to B.:—*Held:* as the transaction of Sept. 25 amounted to a valid equitable assignment of a chose in action for valuable consideration, it was not illegal as contravening the above sect.—GRUNDY *v.* BROADBENT, [1918] 1 I. R. 433.—IR.

sn. *Proclamation of December* 12, 1914—*Taking delivery of goods from ships in neutral ports.*]—Pltfs. a British bank carrying on ss in London & Bombay. were a firm of merchants, h subjects, carrying on business in Bombay. On June 24, 1914, A., a German subject, drew a bill of exchange upon defts in favour of pltfs. The bill purported to be drawn upon defts against fifty bales of goods per a German steamer. The bill was accepted by defts. on July 20, 1914, payable at the office of pltfs. in Bombay. The steamer reached Bombay before the outbreak of war, & in order to evade capture left Bombay & took shelter in a neutral port. bill was presented for payment on the due date with the shipping documents

391. *Add. Annotation :*—**Mentd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

392. *Add. Citation :*—1 Br. & Col. Pr. Cas. 605.
Add. Annotation :—**Mentd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

392a. "Proc. A," par. 7—Goods sent to enemy agent for sale.]—Applts., who were Ottoman subjects carrying on business in England, in Sept. & Nov. 1915 posted to their agent, an Austrian subject, at Shanghai packets of diamonds for sale on their behalf. The diamonds were returned to England by the postal authorities & were seized in the Postal Censor's office in Nov. 1917. They were condemned on the ground that the transaction was a trading with the enemy :—*Held :* the diamonds were properly condemned, since under Trading with the Enemy (China, Siam, Persia & Morocco) Proclamation, 1915, applts.' agent was for the purpose of "Proc. A," an "enemy" & the transaction was a supplying with goods contrary to cl. 5 (7) of the latter Proclamation.—SALTI ET FILS *v.* PROCURATOR-GENERAL, [1919] A. C. 968 ; 88 L. J. P. 209 ; 121 L. T. 459 ; 35 T. L. R. 679 ; 14 Asp. M. L. C. 460, P. C.

396. *Add. Annotation :*—*Generally*, **Mentd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

397. *Add. Annotation :*—**Mentd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle (1922), 91 L. J. Ch. 491.

402. *Add. Annotations :*—*As to* (1) **Refd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714. *As to* (2) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (3) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

403. *Add. Annotation :*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

405a. —— —— —— .]—For many years there existed in Germany works for the manufacture of dyestuffs (Farbenfabriken), belonging to a German concern which carried on business in England through agents. In 1878 the agents were a partnership firm consisting of A. & two other persons. In 1895 A. was the sole partner. In that year a limited co. was formed & registered in England, & in 1898 its name was changed to B. Co. Its original capital was £5,000, divided into 500 shares of £10 each of which A. held five shares & the German concern 470. In 1905 the capital was increased to £25,000 by the issue of 2,000 new shares fully paid, & in 1909 it was increased to £100,000, by the issue of 7,500 like shares. At the times material the German concern held 9,912 shares & A. twenty shares. By an agreement dated in 1910 between the German concern & B. Co., the district of the German concern was defined as the whole world outside the United Kingdom with the Channel Islands & the Isle of Man, & the district of B. Co. as the United Kingdom, the Channel Islands & the Isle of Man. The German concern bound itself not to import goods into B. Co.'s district except for the purposes of B. Co., & B. Co. bound itself not to import into the German concern's district except for the purposes of the German concern. By an agreement, dated in 1912, between the same parties & operative for seven years, the German concern bound itself to sell to B. Co. & to no one else in the United Kingdom for sale in the United Kingdom anilines & chemicals manufactured by the German concern, & B. Co. bound itself to buy from the German concern & from no other manufacturer such dyestuffs. By unwritten agreement B. Co. was bound from its inception to import only from the German concern. From the time of the re

attached but was dishonoured by non-payment. Plffs. filed a suit on Sept. 30, 1915, to recover the amount due on the bill :—*Held :* plffs. were entitled to succeed, as by the above Proclamation the consignees were permitted to take delivery of goods from enemy ships in neutral ports.—MOTISHAW & CO. *v.* MERCANTILE BANK OF INDIA (1916), I. L. R. 41 Bom. 566. —**IND.**

PART IV. SECT. 4.

402 iv. —— —— *Repayment of ents.*]—In Apr., 1914, the A. co. contracted to construct machinery for the B. co. by Dec. 31, 1914. Progress payments were made by the B. co., but none of the machinery was ever delivered. After the commencement of the war, an order was, on Nov. 13, 1914, made under Trading with the Enemy Act, 1914, s. 8, appointing C. controller of the B. co., & on June 13, 1918, under Trading with the Enemy Act, 1914–1916, s. 9B, requiring the B. co. to be wound up, & appointing C. controller. The coutract was never completed :—*Held :* the contract became null & void as from the commencement of the war, & neither B. co. nor C. was entitled to from the A. co. any portion of the sum paid as progress payments.—*Re* CONTINENTAL (1919), 27 C. L. R. 194.—**AUS.**

402 v. —— —— ——.]—A between a British firm & an firm, for the purchase by the latter of goods to be manufactured, provided for an extension of time for delivery if delay should occur owing to beyond the control of the price was payable by of £4,620 was paid to account of the whole when war broke out it illegal to implement he contract. None of the goods had at that time been delivered. T[illegible]er the were completed & sold in Britain at an enhanced price. Third parties having obtained a against the purchasers of the arrested money in the hands of the sellers of the goods :—*Held :* (1) the contract was dissolved by the out of war : (2) the sum paid to of the price of the goods belonged to the buyers & was validly arrested in the hands of the sellers.—DAVIS & LTD. *v.* CLYDE SHIP-ENGINEERING CO., LTD. (1918), 56 Sc. L. R. 21.—**SCOT.**

402 vi. —— —— ——.]—In May 1914, Scottish engineers contracted with Austrian shipbuilders to build a set of marine engines, payment to be by instalments. The first instalment had been paid, but no part of the engines had been built when war broke out & further performance of the contract became legally impossible. After the war on action brought for repetition of the instalment paid *Held :* as the instalment had paid as part of the price of the & as the engines had not been owing to a cause for which neither of the parties was responsible, defenders were bound to make restitution of the instalment.—CANTIERE *v.* CLYDE, [1923] S. C. (H. L.) 105 ; 60 Sc. L. R. —**SCOT.**

402 vii. — *Enemy* —A contract was made in 1911 for the sale by the C. co. to the B. co. of the whole of the output of the C. co. In Sept. 1914, an agreement was entered into between the parties by which the terms of payment were varied : *Held :* the agreement of Sept. 1914, was not rendered null & void by s. 3 (6) of the above Act, nor by Trading with the Enemy Act, 1914.—BROKES HILL *v.* WARSOCK (1922), 39 C. L. R. 362.—**AUS.**

402 viii. —— ——.]—On Feb. 2, 1914, defts. firm agreed to sell to plffs. bars under a c.i.f. contract from Hooghly. The goods were on July 2, 1914, per a German which was subsequently with her cargo & condemned the Ct, the which the goods would be in the Hooghly became impossible by the outbreak of war within Indian Contract Act, s. 56, & was void.—HURRGO DAS *v.* SHIV I. L. R. 45 Calc. 28.—**IND.**

405 i. —— —— *Effect of* —By a contract made after of war with Germany to erman dyes, defts. was not to in case of non-arrival of the at certain ports on account of the state of war. The ship & the demned by a : (1) the (2) th Royal Proclamation of 8, 1914, put an end to the —AMBAL KAZACK *v.* KHANDI ROW I. L. R. 41 Mad. 225.—**IND.**

sp. *Debtor of alien of interest in respect of*

of B. Co. A.'s firm ceased to act as agents for the German concern. B. Co. sold not in the name of the German concern, but in its own name, & as a principal; but it announced to the world on its office windows, & to its customers on notepaper & other documents & by books, catalogues & samples, that it was the sole importer in England of the manufactures of the German concern. It was thus brought home to the customers that they were buying the produce of the German concern as before. The new *régime* was in effect a continuation of the agency though legally the agency had ceased. The business of B. Co. was conducted by A. & another director, both resident in England. The German concern supplied them with lists of prices to be charged by the German concern to B. Co., B. Co. making a profit by selling to customers at a price higher than the list. If an English customer offered to buy at a price lower than the list, the German concern would reduce its price to B. Co. accordingly. The overwhelming shareholding of the German concern in B. Co. caused it to be vitally interested, as seller & buyer, in the contract between itself & B. Co. & as seller in the contract between B. Co. & its customer. Down to the outbreak of war between England & Germany on Aug. 4, 1914, the control of B. Co., its business, affairs & acts, were in the hands of the German concern. On Apr. 1, 1914, B. Co. entered into a contract with a British firm for a supply to the firm of dyestuffs, identified by letters & numbers as the manufacture of the German concern or of other German manufacturers, of which samples from Germany were in the possession of the British firm. It was provided that any duties imposed by the British Govt. on the goods should be paid by the British firm or the price should be advanced accordingly. It was further provided that deliveries or orders off the contract might be suspended by either party if any contingency should arise beyond the control of the parties, such as fire, accidents, war, strikes, or the like. The contract covered a period unexpired at the outbreak of war. At that date quantities of dyestuffs remained undelivered & were never afterwards delivered. An order was made by the Board of Trade, under Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1, for the winding up of the business of B. Co., & a controller appointed. In the winding up the British firm claimed damages for breach of contract in the non-fulfilment of deliveries. The controller resisted the claim on the grounds: (*a*) that the contract was dissolved at the outbreak of war, because B. Co. was an enemy or of enemy character, because the parties contracted on the footing that the goods should come from Germany, & because continued existence or performance of the contract would involve intercourse with, or tend to assist the enemy; (*b*) that owing to the suspension clause no right to damages had yet arisen; (*c*) that the object of the contract had been frustrated, because the period of suspension was indefinite & beyond the contemplation of the parties, because performance of the contract was prevented by Govt. action or embargo, & because the basis of the contract was that the importation of the goods to be supplied should continue to be possible & by reason of war it was rendered impossible. On application to the ct. by the controller for directions whether the claim should be admitted as a debt due from B. Co.:—*Held:* (1) at the date of the outbreak of war B. Co. assumed enemy character, &, accordingly, the contract became dissolved by the outbreak of war as being a current contract entered into with a co. which *eo instanti* assumed enemy character; (2) the abrogation of the contract by outbreak of war being founded on public policy, the presence of a suspension clause in the event of war did not assist the claimant, & if "war" in the clause included war between England & Germany the clause was void as against public policy, & the claim must be rejected; (3) assuming that B. Co. had not assumed enemy character at the outbreak of war, the claim must fail on the following grounds: that, the contract being for the supply of goods to be obtained from Germany, further performance on the outbreak of war involved intercourse with the enemy & became illegal accordingly; that, the contracts having been made on the basis that the existing commercial conditions would continue & that the basis having ceased to exist by outbreak of war between England & Germany, the commercial object of the contract had been frustrated, & the contract was dissolved at the outbreak of war; (4) the suspension clause was not intended by the parties to apply to war between England & Germany; (5) the doctrine of frustration applied to contracts for the sale of unascertained goods.—*Re* BADISCHE CO., LTD., *Re* BAYER CO., LTD., *Re* GRIESHEIM ELEKTRON, LTD., *Re* KALLE & CO., LTD., *Re* BERLIN ANILINE CO., LTD., *Re* MEISTER LUCIUS & BRUNING, LTD., [1921] 2 Ch. 331; 91 L. J. Ch. 133; 126 L. T. 466.

406. *Add. Citations:*—*affd. sub nom.* FRIED KRUPP AKT. *v.* ORCONERA IRON ORE CO., LTD. (1919), 88 L. J. Ch. 304; 120 L. T. 386; 35 T. L. R. 231, H. L.

Add. Annotation:—**Mentd.** *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

408. *Add. Annotations:*—*As to* (1) **Folld.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304. **Reld.** Central India Mining Co. *v.* Soc. Colonial Anversoise, [1920] 1 K. B. 753; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 38 T. L. R. 739. *As to* (2) **Reld.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (3) **Reld.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623.

409. *Add. Annotation:*—**Reld.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

409a. —— —— **Effect of Treaties of Peace & consequent Orders.**]—ROWE BROTHERS & CO., LTD. *v.* LINDGENS (1920), 36 T. L. R. 247.

outbreak of person to an d i in respect of into before the outbreak | of hostilities & sought a refund of the paid for the period between outbreak of hostilities & the date of a licence to trade obtained by the firm:—*Held:* he was not | to of interest in such transactions during t no of period.—VALLI, ETC. *v.* BERTHOLD I. L. R. 44 Bom. 1.—**IND.**

411. *Add. Annotation :—As to* (1) **Refd.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

412. *Add. Annotation :*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

412a. Insurance policy—Effect of Treaties of Peace & consequent Orders.]—EXCESS INSURANCE CO., LTD. *v.* MATHEWS (1925), 31 Com. Cas. 43.

413. *Add. Annotation :—As to* (2) **Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

414. *Add. Annotation :*—**Mentd.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 120 L. T. 386.

416. *Add. Annotations :*— **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

418. *Add. Annotations :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Mentd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

424. *Add. Annotations :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262. **Mentd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753.

425. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

429. *Add. Annotation :—As to* (1) & (2) **Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

445. *Add. Annotation :—As to* (1) **Refd.** The Rannveig, [1922] 1 A. C. 97.

449. *Add. Annotation :* **Mentd.** Produce Brokers Co. *v.* Weis (1918), 87 L. J. K. B. 472.

452. *Add. Annotation :* **Mentd.** Williams *v.* Baltic Insce. Assocn. of London, [1924] 2 K. B. 282.

460. *Add. Annotations :* **Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145. **Mentd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

Part V.—Acquisition of British Nationality.

513. *Add. Annotations :*—**Mentd.** Markwald *v.* A.-G., [1920] 1 Ch. 348; Johnstone *v.* Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.

520. *Add. Citation :*—26 Cox, C. C. 211, D. C.
Add. Annotation :—**Consd.** Markwald *v.* A.-G., [1920] 1 Ch. 348.

520a. —— ——.]—A natural-born German subject left Germany in 1878 & went to Australia, where, in 1908, he took the oath of allegiance to His Majesty & was granted under the powers of the Naturalisation Act, 1903, a certificate of naturalisation by which he became entitled to all political & other rights, powers, & privileges to which a natural-born British subject is entitled in the Commonwealth. He subsequently became a resident in London & was charged & convicted for that, being an alien, he had failed to furnish to a registration officer the particulars required by Aliens Restriction (Consolidated) Order, 1916, & his conviction was afterwards upheld by a Div. Ct. In an action brought by pltf. against the A.-G. for a declaration that he was no alien in England, but a li subject of His Majesty the King, & entitled to the protection of His Majesty the King in all parts of His Majesty's Kingdom & Dominions: *Held:* neither the taking of the oath of allegiance alone, nor the taking of the oath coupled with the grant of the certificate in Australia, made pltf. a British subject in the United Kingdom, & he was, therefore, an alien when in the United Kingdom, & the declaration must be refused. Pltf. was at least to this extent to be regarded as an alien, that he was a person so described in British Nationality & Status of Aliens Act, 1914 (c. 17), & for the purposes of that Act. He was a person entitled under that Act to apply as an alien for & to have granted to him in the United Kingdom a certificate of naturalisation.—MARKWALD *v.* A.-G., [1920] 1 Ch. 348; 89 L. J. Ch. 225; 122 L. T. 603; 36 T. L. R. 197; 64 Sol. Jo. 230, C. A.

nnotation :—**Mentd.** Russian Commercial & Industrial Bank *v.* British Bank for Foreign Trade, [1921] 2 A. C

PART IV. SECT. 5, SUB-SECT. 1.

420 i. *Necessity for licence How val of contract by officer entrusted to grant licence.*]—*Held:* the fact that a contract had been approved by the officer who was *de facto* entrusted by the Crown with the exercise of the to grant licences to trade the enemy was an answer to for trading with the AHOE *v.* SCHROEDER (1916), 22 C. L. R. 362.—**AUS.**

PART V. SECT. 3.

518 ii — —— *Child of mother durali*

Sect. 10 (5) of the above Act not to an infant whose mother by her subsequent marriage to a naturala British subject but has not a widow, obtained a cert of naturalisation in the United K —JERGER *v.* PEARCE (19 27 C. L. R. 526.—**AUS.**

1903 1917, *s.* 10
man naturalised n Act, 1870 (*c.* 14).]—The above sect. does not apply to a child whose mother has married a man who was naturalised under Naturalisation Act, 1870 (*c.* 14).—JERGER *v.* PEARCE (1920), 27 C. L. R. 526.—**AUS.**

ss. *Naturalisation Act, R. S. C.,* 1906 (*c.* 77).—*Status of naturalised* —An alien naturalised in der the above Act acquires the status of a British subject.—*Re* ZANG, [1918] 3 W. W. R. 876; 43 D. L. R. 549.—**CAN.**

v i. *Naturalisation Acts—Fitness of applicant—Previous conv* of imprisonment in default of a fine for supplying intoxicating to an Indian is not a bar to h for naturalisation under the abo Acts.—*Re* BIRNSTIK (1920), 58 D. L. 233; 34 Can. Crim. Cas. 167.—

Part VI.—Loss of British Nationality.

526. *Add. Annotations :*—**Mentd.** Markwald *v.* A.-G., [1920] 1 Ch. 348 ; Johnstone *v.* Pedlar, [1921] 2 A. C. 262 ; The Tervaete (1922), 128 L. T. 176.

533. *Add. Annotations :*—**Consd.** Fasbender *v.* A.-G., [1922] 1 Ch. 232. **Refd.** *Re* Chamberlain's Settlement, [1921] 2 Ch. 523 ; Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850.

536. *Add. Citation :*—26 Cox, C. C. 177, D. C.

537. *Add. Citations :*—16 L. G. R. 764 ; C. C. 244, D. C.

538. *Add. Annotations :*—**Consd.** Fasbender *v.* A.-G., [1922] 1 Ch. 232. **Refd.** *Re* Chamberlain's Settlement, [1921] 2 Ch. 533 ; Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850 ; Kramer *v.* A.-G., [1923] A. C. 528.

538a. —— **British woman marrying alien—In time of war.**]—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., No. 49d, *ante.*

Part VIII.—Immigration and Expulsion of Aliens.

540. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

541. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

543a. — — — — — — — —.]—*In making a recommendation for expulsion part of a s* regard must be had to the period of the alien's residence in this country.—R. *v.* SHAFFNER (1920), 14 Cr. App. Rep. 131, C. C. A.

543b. —— —— —— ——.]—R. *v.* GILBERT (1921), 16 Cr. App. Rep. 34, C. C. A.

PART VI.

ab. *Revocation—Will be stated.*]—A revocation of a certificate of naturalisation need not the reasons of the Governor-General.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436. **AUS.**

ac. — — — *Effect of Treaty of Peace with Germany.*] Art. 278 of the above Treaty does not affect the right of the Governor-General to revoke the certificate of naturalisation of a natural-born German subject.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436.—**AUS.**

ad. *Declaration of intention to become citizen of foreign State.*]—By going to the United States & there making a declaration of intention to become a citizen of that country, a person of German birth naturalised in Canada does not cease to be a British citizen.—NEWMAN (or NEUMAN) *v.* BRADSHAW, [1917] 1 W. W. R. 24 B. C. R. **CAN.**

534 i.
of Aliens Act, 1914 17)—*Declara-*

Military Service Acts.]—A ish subject who is

duly under Military Act, 1916, ss 3, 11, is not from his obl on to serve by a n of British of

1914 (c. 17).—N. Z. L. R. 190.—**N.Z.**

PART VIII.

ix.

by a Chinaman in Canada e held not able for the h of his son,

in o as to il.—*Re* Mono, [1921] 3 W. W. R. —**CAN.**

.]—A an held for de Im- Act (s. 3. His release was for on the th had been in for number of

the son in prohibited from

admittance refused by country in order.]—An order had been made under the above Act for deportation of a native of India to the United States. On the refusal of the United States immigration officials to allow him to enter he was held for deportation to India :—*Held :* he was illegally detained & was entitled to his discharge. —*Re* SANTA SINGH, [1924] 3 D. L. R. 1088 ; 3 W. W. R. 164 ; 34 B. C. R. 190.—**CAN.**

sr. —— *Whether repugnant to Chinese Immigration Act, R. S. C., 1906 (c. 95).*]—*Re* IMMIGRATION ACT. R *v.* JEN JANG HOW, [1919] 3 W. W. R. 271.—**CAN.**

ss. —— *Proceedings under—Not criminal proceedings.*]—R. *v.* ALAMAZOFF, [1919] 3 W. W. R. 281 ; 47 D. L. R. 533.—**CAN.**

sw. —— —— ——.]—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485 ; 37 Can. Crim. Cas. 371 ; [1922] 2 W. W. R. 156.—**CAN.**

sz. —— —— ——.]—*Re* PONG FOOK WING, *Re* IMMIGRATION ACT, [1923] 4 D. L. R. 1034 ; 3 W. W. R. 819.—**CAN.**

t (p. 195) i. —— —— —— *Person not Canadian citizen or having Canadian domicil.*]—The ct. cannot interfere with what is done is by the Immigration officers looking to the deportation of aliens who have not acquired Canadian domicil.—*Re* GOTTESMAN (1918), 29 Can. Crim. Cas. 439 ; 41 O. L. R. 547 ; 13 O. W. N. 344.—**CAN.**

t (p. 195) ii. —— —— —— ——.]—Motion for release from custody of one held for deportation under an order of a Board of Inquiry, was dismissed for want of jurisdiction in the ct. under s. 23 of the above Act. Appt. had not shown that he was a Canadian citizen or had Canadian domicil.—R. *v.* SCHOFFELREI, [1919] 3 W. W. R. 322.—**CAN.**

t (p. 195) iii. —— —— —— ——.]—The ct. has no power to interfere with an order of deportation made by the Board of Inquiry unless the person ordered to be deported be a Canadian citizen or have Canadian domicil.—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485 ; 37 Can. Crim. Cas. 371 ; [1922] 2 W. W. R. 156 ; 59 D. L. R. 626 ; 36 Can. Crim. Cas. 405 ; 30 B. C. R. 70.—**CAN.**

the Immigration Act.—*Re* LIPSTEIN, [1923] 2 D. L. R. 1055 ; 56 N. S. R. (G. & R.) 292.—**CAN.**

e (p. 193) i. —— ——.]—A deportation order made by an Immigration when there is no Board of iry in the vicinity of the port of entry, must show on the face of it that there was no such Board there.—R. *v.* BANNSTEAD, *Ex p.* HANSON, *Ex p.* MOLLER (1920), 55 D. L. R. 287.—**CAN.**

af. *Immigration Act*, 1901–1920—*Prohibited immigrant—Onus of proof—Evidence of prosecution incomplete.*]—Where, on a prosecution under sect. 5 (2) of the above Act, the prosecution proves some only of the relevant facts & does not complete them so as to enable the tribunal to come to a conclusion one way or the other, the averment that deft. is an immigrant & has entered the Commonwealth within three years before failing to pass the dictation test is, under sect. 5 (3), to be deemed to be proved in the absence of proof to the contrary by the personal evidence of deft.—GABRIEL *v.* AH MOOK (1921), 34 C. L. R. 591 ; 31 Argus L. R. 84.—**AUS.**

e (p. 194) i. —— —— *"Landing"—What is.*]—"Landing" is the original act of landing & not the return of a certificated Chinese resident of Canada from a short visit to an adjacent city in the United States.—R. *v.* FONG SOON, [1919] 1 W. W. R. 486 ; 45 D. L. R. 78 ; 31 Can. Crim. Cas. 78.—**CAN.**

so. *Whether repugnant to n Act*, 1910 (c. 27).]—The & mode of procedure of the Board of Inquiry as to deportation under the latter Act are repugnant to the former Act, & do not apply.—*Re* IMMIGRATION ACT, R. *v.* JEN JANG HOW, [1919] 3 W. W. R. 271 ; 47 D. L. R. 538.—**CAN.**

ap. —— ——.]—Sect. 18 of the former Act is not repugnant to s. 3 of the latter Act.—*Re* JUNG YIN, [3 W. W. R. 194.—**CAN.**

order or .]— the ct. had no jurisdiction to interfere. —*Re* YEE FOO, [1925] 2 D. L. R. 113] ; 44 Can. Crim. Cas. 17 ; 56 O. L. R. 669.—**CAN.**

(p. i. —— *Detention for return specified in order—After* will lie in respect of a deportation order made by an

544. *Add. Annotations :- As to* (2) **Folld.** R. *v.* Shaffner (1920), 14 Cr. App. Rep. 131 ; R. *v.* Rogoff (1924), 18 Cr. App. Rep. 1.

544a. —— —— —— —— **Family domiciled in England.**]—R. *v.* ROGOFF (1924), 18 Cr. App. Rep. 1, C. C. A.

547. *Add. Annotation :*—**Folld.** R. *v.* Gilbert (1921), 16 Cr. App. Rep. 34.

548a. —— —— —— **Unnecessary aggravation of sentence involved.**]—R. *v.* IRVING (1920), 15 Cr. App. Rep. 61, C. C. A.

551. *Add. Annotations :*—**Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209 ; R. *v.* Brixton Prison, *Ex p.* Bloom (1920), 90 L. J. K. B. 574 ; R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386.

551a. —— —— ——.]—Aliens Order, 1919, art. 12, par. 1, which empowers the Secretary of State "if he deems it to be conducive to the public good" to make a deportation order against an alien, is not *ultra vires*. In acting under the article the Secretary of State is not a judicial, but is an executive officer, & is therefore not bound to hold an inquiry or give the person against whom he proposes to make a deportation order the opportunity of being heard.— R. *v.* LEMAN STREET POLICE STATION INSPECTOR, *Ex p.* VENICOFF, R. *v.* SECRETARY OF STATE FOR

officer whose jurisdiction so to act in the stead of a Board of Inquiry is not shown on the face of the order, although an appeal by appet. to the Minister of the Interior under s. 19 of the above Act has been unsuccessful.—R. *v.* BANNSTEAD, *Ex p.* HANSON, *Ex p.* MOLLER (1920), 55 D. L. R. 287.—**CAN.**

t (p. 195) v. —— —— ——.]—If it be proved that the Board of Inquiry has not acted judicially, but merely on instructions from Ottawa, in ordering the deportation of a Chinaman, the ct. would be bound to grant an application for a writ of *habeas corpus*.—*Re* JUNG YIN, [1921] 3 W. W. R. 194.—**CAN.**

t (p. 195) vi. —— ——.]—An appeal lies in *habeas corpus* proceedings where a person is detained under the above Act.—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485 ; 37 Can. Crim. Cas. 371 ; [1922] 2 W. W. R. 156.—**CAN.**

t (p. 195) vii. —— ——.]—An appeal lies to the Ct. of Appeal from an order made in *habeas corpus* proceedings releasing a person detained under the above Act.—*Re* PONG FOOK WING, *Re* IMMIGRATION ACT, [1923] 4 D. L. R. 1034 ; 3 W. W. R. 819.—**CAN.**

v (p. 195) i. —— —— —— *Chinese immigrant.*]—Under s. 23 of the above Act the ct. is prevented from interfering with the decision of a Board of Inquiry concerning the admission of a Chinaman to Canada.—*Re* WONG SIT KIT, [1921] 3 W. W. R. 116.—**CAN.**

v (p. 195) ii. —— —— ——.]—The decision of a Board of Inquiry as to the admission of a Chinaman is not subject to review by the ct.—*Re* WONG SUEY MONG, [1921] 3 W. W. R.

sa. *Immigration Amendment Act*, 1919 (*c.* 25)—*Not retrospective.*]—*Re* IMMIGRATION ACT & SANTA SINGH, [1920] 2 W. W. R. 999.—**CAN.**

sb. —— *Appointment of immigration officer—Sufficiency.*]—The signature of the Acting Deputy Minister of Immigration & Colonisation is sufficient.—*Re* PAPPAS, [1921] 1 W. W. R. 949.—**CAN.**

sc. —— *Deportation order—Form of order.*]—Where an order only stated "P. C. 23" as the reason for deportation :—*Held :* such an order was defective.—R. *v.* LANTALUM, *Ex p.* OFFMAN (1921), 62 D. L. R. 223 ; 35 Can. 48 N. B. R. 448.—**CAN.**

Amendment of order.]—An order of deportation, insufficient in form as not showing jurisdiction, may be by the immigration officer.—1 W. W R. 949.—**CAN**

sf. *Opium &* —— —— —— *—Proceedings under—Not criminal proceedings.*]—*Re* LOO LEN, [1924] 1 D. L. R. 909 ; 1 W. W. R. 733 ; 41 Can. Crim. Cas. 386 ; 33 B. C. R. 3.—**CAN.**

sg. —— *Conviction under—No order against deportation Power to subsequent order.*]—There is no power to make an order except at the time of conviction.—*Re* JOE FONG (1923), 53 O. L. R. 493 ; 24 O. W. N. 39.—**CAN.**

order against deportation made subsequently is invalid.— R. *v.* LEE PARK, [1924] 4 D. L. R. 883 ; 3 W. W. R. 490.—**CAN.**

sj. —— —— *Subsequent detention for deportation—Validity.*]—Accused was convicted under s. 5*a* (2) of the 1911 Act & fined with imprisonment in default of payment. The fine was not paid, & on the termination of the imprisonment prisoner was held for deportation under s. 10*b* :- *Held :* the purpose of s. 10*b* was to superadd the penalty of deportation as a consequence of a conviction for the commission of any of the statutory offences created by s. 5*a*.—R. *v.* How, 4 D. L. R. 1007 ; 56 N. S. R. (G. R.) 372.—**CAN.**

sk. —— —— —— *Application for release.*]—Where an alien has been convicted under s. 5*a* (2) of the 1911 Act & upon termination of the imprisonment imposed is detained for deportation under s. 10*b*, he is not entitled to release on *habeas corpus* on the ground of having Canadian domicil within Immigration Act, s. 43 R. *v.* CHANG SONG, [1924] 1 D. L. R. 1161 ; 1 W. W. R. 778 42 Can. Crim. Ca 8 ; 33 B. C. R. 176.—**CAN.**

sl. — — —— —— ——.]—A warrant of deportation regular on its face hav issued after prisoner had served his sentence on conviction under the 1911 Act, the ct., on an application in proceedings, can only inquire into the truth of the statements made in the warrant, & cannot interfere by reason on the unlawful imposition of hard labour by the sentence & conviction.—R. *v.* CHOW TONG (1924), 34 B. C. R. 12.—**CAN.**

sm. —— —— — —— — —.]—Where a prisoner has been convicted of an infraction of the 1923 Act & is held for deportation, the mere fact that the warrant committing him for deportation, although stating him to be an alien, does not show or recite that a Board of Inquiry was held as provided by Immigration Act, is not a for granting a writ of *habeas* R. *v.* GEE DEW (No. 3), [1924] 3 D. L. R. 186 ; 2 W. W. R. 793 ; 42 Can. Crim. Cas. 213 ; 33 B. C. R. 548.—**CAN.**

—— *Appeal.*]— under s. 5*a* (2) of the 1911 Act, & condemned to pay a fine, & in default of payment to imprisonment. Upon termination of the imprisonment he was kept in custody for deportation under s. A writ of *habeas corpus* was granted accused ordered to be discharged f custody. On appeal the order sustained.—*Re* MAH SHIN *Re* SING YIM HONG, [1923] 4 D. R. 844 ; 39 Can. Crim. Cas. 401 , 32 B. C. R. 17 [1923] 1 W. W R. —**CAN.**

Where an alien on the termination of his imprisonment, imposed on conviction under the 1911 Act, is detained deportation & he applies for *rpus*, but is refused release, an appeal from such refusal lies to the Ct. of Appeal. —R. *v.* LOO LEN, [1924] 1 D. L. R. 909 ; 1 W. W. R. 733 ; 41 Can. Crim. Cas. 386 ; 33 B. C. R. 418.—**CAN.**

st. *Chinese Ex* (*c.* 37) (*Cape*)—*Deportation after conviction—Effect of exemption certificate.*]—Applts., being Chinamen & holders of exemption certificates under the above Act, having each been convicted at least twice for offences against the gambling laws, but none of them having served two terms of imprisonment :- *Held :* not to be exempted under s. 2 (*c*) of the Act from s. 34, & liable under the terms of the latter sect. to be deported.- AH YET *v.*

97.- **S. AF.**

sv. *Act of 1913—Prohibited immigrant—Conditions for residence.*]—The entry of applt., an Asiatic, into Natal was not discovered until Apr. 1916, when he was arrested as a prohibited immigrant under s. 4 (1) (*a*) of the above Act : *Held :* he had obtained no title to reside in the Union until he had successfully presented himself as an immigrant no matter how well qualified he might be to obtain a title to reside in the Union.—ISSAT *v.* IMMIGRANTS' APPEAL BOARD (1916), 37 N. L. R. 277.- **S. AF.**

after temporary residence in India—

e to India.]—Applt., a resident in Natal from 1897, in 1911 went to India with the object of seeking a wife there from among his own relations. Prior to leaving for India he applied to the authorities for a certificate of domicil, but that certificate was illegally refused. Applt.'s visit to India was extended to a period of four years, & he returned to Natal in Apr. 1915 :—*Held :* applt.'s visit to for a special or temporary the home in Natal continued to be his place of permanent abode, & he was domiciled in Natal within s. 30 of the above Act.—KAJEE *v.*

N. R. **S. AF.**

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tificate acquired before departure to India.]—Immigrant, an Indian, first came to Natal in 1893, where he continued to reside. In 1903 he obtained a certificate of domicil. In 1902 immigrant went back to India. ally he returned to Natal but was

under the above Act :- the certificate conferred upon him rights, which were not by the above Act, & ther tion on the part of immigrant to

HOME AFFAIRS, *Ex p.* VENICOFF, [1920] 3 K. B. 72 J. K. B. 1200; 23 L. T. 573; 84 J. P. 36 T. L. R. 677, D. C.

Annotation **Refd.** *R. v.* Home Secretary, *Ex p.* Bressler 131 L. T. 386.

553. *Add. Annotations:* - *As to* (1) **Consd.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 200.

- - - - **Aliens Restriction (Amendment) Act, 1919 (c. 92)—Power of expulsion in time of peace.**]- Appet. was charged before a metropolitan police magistrate with four offences under the above Acts. He pleaded guilty to the charges, & was sentenced to fourteen days' imprisonment & recommended for deportation. After having served his sentence, he was detained in prison awaiting deportation. The Secretary of State had on the day after the expiration of the sentence made an order for the deportation of appet. Upon an application for a writ of *habeas corpus: Held:* the order of the Secretary of State was not *ultra vires*, but was within the powers conferred upon him by the above Acts, & Aliens Order, 1920, art. 12.—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* BLOOM (1920), 90 L. J. K. B. 574; 124 L. T. 375; 85 J. P. 87; 10 L. G. R. 62; 26 Cox, C. C. 687, D. C.

R. NOAHSAMY CHETTY (1917), 38 N. L. R. 42.- **S. AF.**

ab. - - - - - - *Domicil certificate acquired by deceased parent.*]- K., the possessor of a certificate of domicil under the above Act, brought his wife & son, N., to Natal from India in 1911. In 1914 they returned to India & lived there till after K.'s death in Natal in 1917. On a question as to whether N. could of right enter Natal in 1920. *Held:* N. had no such right under s. 3 (g) of the above Act, as he had no father domiciled in Natal.- NAIDOO *v.* IMMIGRANTS' APPEAL BOARD (1921), 42 N. L. R. 30 **S. AF.**

ac. - - - *Second wife of Mohammedan.*] Where a Mohammedan's daughter & her mother have returned to India & both are residing there, another wife of such Mohammedan is not a prohibited immigrant - MARIAM & MAHOMED *v.* IMMIGRANTS' APPEAL BOARD (1918), 39 N. L. R. 382.— **S. AF.**

ad. - - - - - - *Sons of domiciled parents - Resident in another province.*] - M. & Y., Asiatics, & the minor sons of parents resident in the Transvaal, ly resident in Natal, &

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(1921), 42 N. L. R. 337.— **S. AF.**

af. - — *Deportation under — Conviction obtained without Union.*] A person not born in the Union of So Africa who is convicted of an offence der s. 4 (1) (b) of the above Act to be deported under s. 22, whether the viction took place within or out the Union.- COLLIS

553b. - - - - - - - - - - .]—The Order in Council made as to the deportation of aliens on Mar. 25, 1920, under sect. 1 (1) of each of the above Acts, did not expire when the power to make such an order would, but for further legislation, have expired, namely on Dec. 23, 1920, inasmuch as the Act of 1919 has been continued by the Expiring Laws Continuance Acts, 1920 (c. 73), & 1921 (c. 53).—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SUGARMAN (1922), 127 L. T. 27; 86 J. P. 75; 38 T. L. R. 325; 27 Cox, C. C. 208, D. C.

553c. - - - - - - **Form of order by Secretary of State.**]—The making of an order for the deportation of an alien under Aliens' Order, 1920, art. 12 (6), lies within the discretion of the Home Secretary. It is desirable that an order made under the article should state on the face of it that the Home Secretary deems it to be conducive to the public good to make the order.—R. *v.* HOME SECRETARY, *Ex p.* BRESSLER (1924), 131 L. T. 386; 88 J. P. 89; 68 Sol. Jo. 646; 22 L. G. R. 460; 27 Cox, C. C. 655, C. A.

553d. - - - - - - **Recommendation for deportation —Right of appeal.**]—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, No. 558e,

R. *v.* UNION GOVERNMENT, [1917] App. D. 550.- **S. AF.**

examination of immigrants completed.]- Where a person was convicted of bei on board a ship before the general lon of immigrants had been ted, & stated in defence that notice to the master of the ship had been given:—*Held:* he was rightly convicted.— ANGLIA *v.* R. (1918), 39 N. L. R. 147.— **S. AF.**

ak. - - - *Decision of immigration authority - Jurisdiction of court to interfere.*] - The ct. may interfere where there is a manifest absence of jurisdiction or if an order is made or obtained fraudulently — UNION GOVERNMENT *v.* FARIR, [1923] App. D 466.— **S. AF.**

al. - - - - - - - - - - - - .]— , an had been declared by the ion officer of Natal to be a

tion to the ct. for an order rest his deportation:—*Held:* as the immigration officer had not acted outside his jurisdiction or *mala fide*, the ct. had no jurisdiction to make the order prayed.— NARAINSAMY *v.* PRINCIPAL, ETC., [1923] App. D. 673.— **S. AF.**

am. *Indian Immigration Act*, 1891

Indian

under the above Act for attendance on Indian imi who, after being free, had not re-indentured, themselves & for their descendants.—INDIAN IMMIGRATION TRUST BOARD OF NATAL *v.* GOVINDSAMY (1920), 37 T. L. R. 128.— **S. AF.**

552 l. *Aliens Restriction Order*, 1915 *— Power of expulsion in war time— Validity of Order—Power to*

—*Held:* par. 25 of the above Order was within the authority conferred by War Precautions Act, 1914-1916, s. 6; it conferred a discretion upon the Minister to make an order for the deportation of any particular alien, & authorised his quent arrest & detention & the hin on board a ship chosen by the Minister, & his detention there whilst the ship was in the territorial limits of the Commonwealth; & such an order was not rendered invalid by the fact that the Minister made it for the purpose of carrying out an agreement by which the Commonwealth Govt. was under an obligation to the country of which the particular alien was a subject to assist as far as possible in enforcing the return to that country of persons liable to military service there.—FERRANDO *v.* PEARCE (1918), 25 C. L. R. 241.— **AUS.**

an. - - - - - - *Necessity of communication of deportation order to alien.*] —Par. 25 of the above Order does not require communication to the alien of a deportation order made under it by the Minister of Defence.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436.— **AUS.**

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order.]—Such order need not be in any particular form.—JERGER *v.* PEARCE (1920), 28 C. R. 588.— **AUS.**

aw. *Aliens Restriction Order*, 1916 *—Power of expulsion in war time— Subject of allied State liable for military service.*]—The Minister having ordered the deportation of an Italian for military service, the ct. an application for a rule *nisi* for *cas corpus*, the matter being in the Minister's discretion under the e Order.— *Ex p.* MAUGI (1918), 18 R. N. S. W. 150.— **AUS.**

Part IX.—Registration, Internment, and other Restrictions.

557. *Add. Citation:*—(1917), 26 Cox, C. C. 16, D. C.

558a. —— —— —— **Aliens Order, 1920.**]—(1) The word "keeper" in the above Order of 1920, art. 20 (2), includes the lessee of a house who lets unfurnished rooms in the house in separate lettings to tenants at weekly rentals & employs another person to manage the house for him.

(2) A flat let on a seven years' lease would not constitute "premises" within the above Order of 1920, art. 6, but that art. does not apply to rooms in a leasehold house let unfurnished on weekly tenancies, there being a manager of the house employed by the lessee whose duties include cleaning the common stairs, ways & places, the maintenance of electric light, & so on.—RODDA *v.* GODFREY (1926), 95 L. J. K. B. 704; 90 J. P. 111; 42 T. L. R. 173; 24 L. G. R. 311; 28 Cox, C. C. 209, D. C.

558b. —— **Aliens Restriction (Amendment) Act, 1919 (c. 92)—Restrictions as to change of name—Carrying on business under pre-war name.**]—Resp., who was an alien, & whose real name was Karel Kollross, purchased in 1921, & continued to carry on, a business under the name of the Widmore Laundry, which business had been carried on under the same name by his predecessors for many years before Aug. 4, 1914. Apart from the laundry business resp. continued to be known as Karel Kollross, & he was registered in that name as the proprietor of the Widmore Laundry under Registration of Business Names Act, 1916 (c. 58). An information having been preferred against resp. for using the name Widmore Laundry, being a name other than that by which he was ordinarily known on Aug. 4, 1914, contrary to sect. 7 of the Act of 1919, the justices dismissed the information:—*Held:* the justices were right, as resp. had committed no offence against sect. 7 (1), by taking over an old-established business with a pre-war name & continuing to carry it on under that name.—BRUNNING *v.* KOLLROSS, [1923] 1 K. B. 311; 92 L. J. K. B. 323; 128 L. T. 600; 87 J. P. 41; 39 T. L. R. 129; 67 Sol. Jo. 278; 21 L. G. R. 168; 27 Cox, C. C. 383, D. C.

558c. —— —— **Prosecution under—Whether offences triable on indictment.**]—(1) On a prosecution for an offence against a statutory Order, an objection that the Order has not been proved must be taken before the ct. at the trial. It is too late to take the point for the first time on appeal.

(2) In cases under the Act of 1914, s. 1 (4), & the Act of 1919, s. 13, when any question arises whether the person charged is an alien or not the *onus* lies upon him to prove that he is not an alien.

(3) Offences against the Act of 1914 & the Act of 1919 are punishable only in the manner prescribed by the statutes, namely on summary conviction, unless the person charged with the offence claims the right under Summary Jurisdiction Act, 1879 (c. 49), s. 17, to be tried with a jury. Where, therefore, an offence under those Acts was treated by the magistrate as an indictable one & the case sent for trial before quarter sessions without any claim for trial with a jury having been put forward by prisoner, the conviction at the sessions was quashed.—R. *v.* KAKELO, [1923] 2 K. B. 793; 92 L. J. K. B. 997; 129 L. T. 477; 87 J. P. 184; 39 T. L. R. 671; 68 Sol. Jo. 41; 27 Cox, C. C. 464; 17 Cr. App. Rep. 150, C. C. A.

558d. —— —— —— **Proof of Order.**]—R. *v.* KAKELO, No. 558b, *ante*.

558e. —— —— —— **Proof of alienage.**]—R. *v.* KAKELO, No. 558b, *ante*.

558f. —— —— —— **Appeal—Effect of ambiguous plea.**]—Appet. was charged under Aliens Order, 1920, with, being an alien, having failed to notify his change of address. When before the magistrate he was asked "Are you an Egyptian?" to which he answered "Yes." He was then asked "Did you tell the registration officer that you intended to change your residence, & tell him when & where you were going?" to which he answered "No." Thereupon the magistrate entered a plea of guilty & sentenced appet. to imprisonment for one month & recommended the making of a deportation order against him:—*Held:* appet. had not pleaded guilty or admitted the truth of the charge within Summary Jurisdiction Act, 1879 (c. 49), s. 19, or Criminal Justice Administration Act, 1914 (c. 58), s. 37, &, therefore, he had a right of appeal to quarter sessions by virtue of those sections. R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, [1921] 2 K. B. 473; 90 L. J. K. B. 818; 125 L. T. 310; 85 J. P. 189; 37 T. L. R. 611; 19 L. G. R. 401; 26 Cox, C. C. 747, D. C.

558g. —— —— —— **From recommendation for deportation.**]—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, No. 558c, *ante*.

559. *Add. Annotation:*—**Refd.** Romfeldt *v.* [illegible] (1918), 35 T. L. R. 46.

560. *Add. Annotations:* **Consd.** Ernest *v.* Metropolitan Police Comr. (1919), 89 L. J. K. B. 42. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209; *Re* De Keyser's Royal Hotel, De Keyser's Royal Hotel *v.* R., [1919] 2 Ch. 197; Chester *v.* Bateson, [1920] 1 K. B. 829; Fowle *v.* Monsell (1920), 90 L. J. K. B. 105; Gurney *v.* Houghton (1920), 123 L. T. 706; Bay Co. *v.* Maclay (1920), 36 T. L. R. [illegible]; R. *v.* Leman Street Police Station I[illegible]spector, *Ex p.* Venicoff, [1920] 3 K. B. 72; R. *v.* Wormwood Scrubbs Prison, [1920] 2 K. B. 305; Shutler *v.* Rolfe (1920), 36 T. L. R. 828; R. *v.* Cannon Row Police Station Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98.

561. *Add. Annotations:*—**Refd.** R. *v.* Secretary of State for Home Affairs, *Ex p.*

PART IX.

ex. *Registration — No place of* *of no* —Deft. | was convicted for neglect to re[illegible] an enemy alien. There was no evi[illegible] that deft. had no permanent place of residence in Canada:—*Held:* [illegible], 44 O. W. N. -CAN.

2 K. B. 361. **Mentd.** *Re* Clifford & O'Sullivan, [1921] 2 A. C. 470; Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

561a. —— **Restrictions as to change of name—Validity.**]—*Applt.*, a foreigner by birth, became a naturalised British subject in 1912, & changed his name by deed poll in 1915 from Ernst to Ernest. In 1919 he was convicted under reg. 14h of the above regulations, for that, not being a natural-born British subject, he used a name other than that by which he was ordinarily known at the beginning of the war. He contended that reg. 14h was *ultra vires*, on the ground that it was not competent by Order in Council, issued under Defence of the Act, 1914 (c. 8), to deprive him of any rights, powers, or privileges which were not at the same time taken away from all British subjects; & that the regulations purported to override an Act of Parliament, although there was no power under the Act of 1914 to do so:—*Held:* reg. 14h was not *ultra vires* because it discriminated between naturalised & natural-born British subjects.

Regulations made by the King in Council under Defence of the Realm Act, 1914 (c. 8), have all the force of a statute & may take away a statutory privilege or impose a statutory duty.—ERNEST *v.* METROPOLITAN POLICE COMR. (1919), 89 L. J. K. B. 42; 121 L. T. 222; 83 J. P. 182; 35 T. L. R. 512; 17 L. G. R. 448; 26 Cox, C. C. 458, D. C.

563. *Add. Citation:*—26 Cox C. C. 58, D. C.

ANIMALS.

Part II.—Property in Animals.

34. *Add. Annotation :—As to* (3) **Refd.** Granby *v.* Bakewell U. D. C. (1923), 87 J. P. 105.

43. *Add. Annotation :*—**Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

44. *Add. Annotations :—As to* (1) **Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178. *As to* (2) **Consd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

45. *Add. Annotations :*—**Refd.** The Tubantia, [1924] P. 78. **Mentd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244.

46. *Add. Annotation :*—**Refd.** The Tubantia, [1924] P. 78.

47. *Add. Annotation :*—**Mentd.** The [1926] P. 185.

64. *Add. Annotation :*—**Mentd.** Nye *v.* Niblett (1917), 16 L. G. R. 57.

73. *Add. Annotation :* **Refd.** The Tubantia, [1924] P. 78.

90. *Add. Annotations :—As to* (1) **Consd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178. *As to* (2) **Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

Part III.—Rights and Liabilities of Owners of Animals.

101. *Add. Annotation :*—**Apld.** Barnard *v.* Evans, [1925] 2 K. B. 794.

107. *Add. Annotation :*—**Refd.** Stearn *v.* Prentice, [1919] 1 K. B. 394.

109. *Add. Annotation :*—**Consd.** Hines *v.* Tousley (1920), 95 L. J. K. B. 773.

113. *Add. Annotation :—Generally*, **Mentd.** Hardy *v.* C. L. Ry., [1920] 3 K. B. 459.

116. *Add. Annotation :* **Consd.** Barnard *v.* Evans, [1925] 2 K. B. 791.

117. *Add. Annotation :* **Refd.** Nye *v.* Niblett (1917), 87 L. J. K. B. 590.

119. *Add. Annotation :* **Consd.** Horton *v.* Gwynne, [1921] 2 K. B. 661.

130. *Add. Annotation :* **Mentd.** Ilford U. D. C. *v.* Beal, [1925] 1 K. B.

PART II. SECT. 1, SUB-SECT. 1.

sa. *Camel.*}—Under the condition of affairs which has existed in Western Australia for many years, camels are to be regarded as belonging to the class of domestic animals.—NADA SHAH *v.* SLEEMAN (1917), 19 W. A. L. R. 110.—**AUS.**

PART II. SECT. 2, SUB-SECT. 1.—A.

19 ii. —— —— ——.}—A fox born & reared in captivity escaped & was killed by defts. upon a stranger's land a week later :—*Held :* the fox was an animal *feræ naturæ ;* pltf.'s qualified property therein came to an end when the animal escaped & was reduced into actual possession by defts. ; there was no immediate pursuit, nor was there *animus revertendi.*—CAMPBELL *v.* HEDLEY (1917), 39 O. L. R. 528 ; 37 D. L. R. 289.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.

74 ii. —— *Animal killed by trespasser.*}—When a person kills a wild animal on the property of another the carcase does not belong to the killer but to the proprietor of the property, & the latter, either himself or by his duly authorised agent, is entitled to demand &, if refused, seize the carcase, & such persons as help him to exercise his right are doing no wrong ; but as against any other person, the killer has a right to retain possession of the carcase.—R. *v.* ARTU RANTRA (1924), I. L. R. 3 Pat. 549.—**IND.**

PART II. SECT. 3.

sb. *As between husband & wife— on husband's farm.*}—Where cattle belonging to a wife are placed on her husband's farm, fed from the crops grown thereon & looked after by him in carrying on farming operations, not as her agent or m
but as his own business, & the o
of the original stock are treated in
same way & sold from time to time &
the proceeds invested in other stock, the increase of the original animals & the animals bought from the proceeds of the sale cannot be claimed by the wife.—MINAKER *v.* HADDEN, [1917] 3 W. W. R. 774.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1. B.

sc. *Straying bull tied up during —Released & driven away next found dying.*}—Deft. tied up over night a bull which had strayed on his premises, to prevent it damaging his cows, & released it next day & drove it away. In the evening it was found castrated near the boundary of deft.'s farm & died the next day. In an action for damages : —*Held :* deft.'s actions were justified, & in the absence of evidence as to when or how or by whom the animal was injured, pltf. could not succeed.—
v. MALESHCHAK, [1924] 4
R. 585 ; 3 W. W. R. 305.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1. E.

sd. *Claim against custodian of animal—Onus of proof as to ab of ce.*}—The *onus* is upon the custodian to show that the injury did not occur through his act or negligence only where it is shown that the injury occurred when the animal was or should have been in his custody or control, or that he was under an obligation to account for it to the owner.—FROWICH *v.* MALESHCHAK, [1924] 4 D. L. R. 585 ; 3 W. W. R. 305.—**CAN.**

132 ii a. —— *Animal falling in well —Animal lawfully at large.*}—Pltf.'s horse while lawfully running at large was killed by falling into an open well on deft.'s land. Deft., who knew of the open well, was residing outside the province, the land being occupied by a tenant :—*Held :* deft.'s breach of Open Wells Act gave pltf. a right of action "on a tort committed within the jurisdiction," justifying allowance of the issue of a writ for service on deft. *ex juris.*—BROTHERSON *v.* KEN-
R. 803 47
D. L. R. 131 ; 12 L. R. 30
CAN.

132 ii b. — — — — *What is an "open well."*}—Whether a well is an "open well" or not is a question of fact to be proved at the trial. While it might be an "open well" if insecurely covered, the fact that an animal falls into it without any evidence of how it occurred does not prove it such, nor does the fact that the material of the covering was seven years old. DAVIS-DALE *v.* REID, [1920] 3 W. W. R. 832.—**CAN.**

132 iii a. — — — —.}—The digging by a municipality of a ditch dangerous to animals alongside the travelled portion of a highway & the leaving of it unprotected, was to be a misfeasance which
pality liable for the loss of a
which plunged into the ditch & was killed.—HOWELL *v.* WILTON MUNICIPALITY No. 472 (1922), D. L. R. 321 ; 16 Sask. L. R. [1922] 2 W. W. R. 565.—**CAN.**

132 iv.
ration.}—Deft. & pltf.
Pltf.'s cows while
pltf. could not recover damages.—
TRIZES *v.* SHORT, [1921] 2 W. W. R. 16 Alta. L. R. 482.—**CAN.**

132 v. — — — —.}—The owner or occupier of land will be liable in d
s for any loss of s
from failure to guard
to an excavation.—KELLOGG *v.* HAYES (1922), 69 D. L. R. 528 ; [1922] 3 W. W. R. 573.—**CAN.**

132 vi. —— — — *Cellar of unused*
}—Deft. owned unfenced land on
a cellar cattle. Pltf.'s
at of into the h , &, while
of its not
the door above be
unable to withdraw it. *Held*
the animals must take the
it, & Open Wells Act did not

134. *Add. Annotation :*—**Refd.** British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147.

139. *Add. Annotations :*—**Consd.** Dunster *v.* Hollis, [1918] 2 K. B. 795. **Mentd.** Fairman *v.* Perpetual Investment Bldg. Soc., [1923] A. C. 74 ; Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253.

145. *Add. Annotation :*—*As to* (1) **Refd.** British & Foreign Marine Insco. *v.* Gaunt, [1921] 2 A. C. 41.

145a. **Animal killed—Meaning of "external & visible injury."**]—A policy of insurance provided that an insurance co. should indemnify the insured against death solely attributable to accidental external & visible injury to any horse the property of the insured, duly certified by a veterinary surgeon, & further provided that the due observance & fulfilment of the conditions of the policy should be a condition precedent to any liability of the co. under the policy. The insured's horse, drawing a loaded van, got out of the driver's control, bolted, & fell into a ditch with the van on top of it, & died in consequence of the pressure of a shaft upon its windpipe. There was no mark visible on the skin of the horse, & no certificate of a veterinary surgeon was obtained :—*Held :* (1) it was not necessary that there should have been any mark visible on the skin of the horse, & the injury was external & visible ; & (2) it was a condition precedent to the insured's right to recover that the death of the horse should be duly certified by a veterinary surgeon, but, on the facts of the case, the co. had waived compliance with such condition.—BURRIDGE & SON *v.* HAINES (F. H.) & SONS, LTD. (1918), 87 L. J. K. B. 641 ; 118 L. T. 681 ; 62 Sol. Jo. 521, D. C.

151. After this case add "*See, also,* CONSTITUTIONAL LAW, Vol. XI., p. 589 ; COPYHOLDS, Vol. XIII., pp. 21 *et seq.*

154. *Add. Citation :*—17 C. B. N. S. 251, n.

Add. Annotations :—**Refd.** Read *v.* Edwards (1864), 17 C. B. N. S. 245 ; Gayler & Pope *v.* Davies (1924), 93 L. J. K. B. 702.

apply.—WRUBLESKI *v.* LOFF, [1923] 2 W. W. R. 761.—**CAN.**

z i. — — — — .]—Where there is a by-law permitting cattle to run at large & such cattle are injured by the barbed wire of a fence which has fallen down through the rottenness of its posts, the owner of the fence is liable for the injury to cattle lawfully on the highway, & injured thereon.—CHASE *v.* CORPORATION, [1917] 2 W. W. R. 736 —**CAN.**

137 xiii. — — — *Negligence of owner.*] An action will not lie for damages for the loss of cattle killed by a train when the cattle were on the railway line through the negligence of plff.—NELSON *v.* GRAND TRUNK PACIFIC RY. CO. (1920), 51 D. L. R. 141.—**CAN.**

k i. *Grain left ac*

by

a granary no fault of *d :* deft. was not Open Wells Act, R. S. S. (c. 124), s. 3. HILL *v.* MALLACH, [1918] 1 W. W. R. 10 ; 10 Sask. L. R. 410 ; 37 D. L. R. 709.—**CAN.**

k ii. — — — *Animal lawfully at large.*] Where the non-observance by a proprietor of land of Open Wells Act, R. S. S., 1909 (c. 124), s. 3, results in injury to animals lawfully at large which have strayed upon his land, he is liable in damages to their owner.—WATSON *v.* [illegible], [1918] 2 W. W. R. 1047 ; 11 Sask. L. R. 348 ; 42 D. L. R. 380.—**CAN.**

If grain be left in such an condition as to permit of attracted by it & eating it to their injury, the owner of the grain will be for the resulting

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FULTON *v.* RANDALL, GEE & MITCHELL, LTD., [1918] 3 W. W. R. 331.—**CAN.**

—.]—A person who aim to be awarded in damages for of an animal r , even though the at large, unless the of the animal when turning it at

to stock.—HAWORTH *v.* WEBB (1922), 65 D. L. R. 174 ; 15 Sask. L. R. 275 ; [1922] 1 W. W. R. 1070.—**CAN.**

k v. — — — — — — .]—Plff. that deft. while engaged in left out in his unfenced ploughed unprotected waggon box w

contained wheat & that plff.'s horse while lawfully running at large gorged itself with the wheat & died :—*Held :* deft. was not liable.—MUSSELMAN *v.* ZIMMERMAN (1922), 66 D. L. R. 350 ; [1922] 2 W. W. R. 610.—**CAN.**

k vi. — — — — — .]—The result of an action under Open Wells Act, R. S. S., 1920 (c. 169), does not depend upon whether or not the animals injured were unlawfully at large under Stray Animals Act, R. S. S. 1920 (c. 121).—WENTZALL *v.* PERKS [1924] 3 W. W. R. 876.—**CAN.**

k vii. — — — *Grain mixed with substance.*]—No liability s to a railway co. for damages for the loss of cattle which die from eating grain which has become mixed with lead ore, where the grain was dropped upon the ground among the particles of lead ore by a customer of the railway co. while unloading grain from the company's cars.—DAWSON *v.* PARADISE MINE & CANADIAN PACIFIC RY. CO., [1919] 1 W. W. R. 499.—**CAN.**

n i. — — *Running into animal using* .]—Deft., while driving his at dusk at twenty-five hour with his lights on, ran into plff.'s cow which he had not seen until very close to it. He was held liable in damages.—JOHNSON *v.* GIFFEN (1921), 62 D. L. R. 635 ; [1921] 3 W. W. R. 596.—**CAN.**

w i. — *Liability of boatowner for act of repairer.*] A boatowner employed a joiner to repair his boats. The paint scrapings were left lying on the ground, & poisoned a cow that was grazing on the pasture :—*Held :* it was the boatowner's duty to see that the paint scrapings were removed, & he de in damages for the cow's STEWART *v.* ADAMS, [1920] S. C. 129 ; 57 Sc. L. R. 83.—**SCOT.**

141 i. *Wrong quantity in*

that the death of his sheep was to the presence of an excess of ars in powder manufactured & sold by defts. which he had added, together with more than the quantity of water specified in defts.' printed instructions, to a solution through which the sheep had already been passed without injury :—*Held :* plff. had not proved that the death of the sheep was due to an excess of arsenic in the powder.—COOPER *v.* VISSER, [1920] App. D. 111.—**S. AF.**

PART III. SECT. 1. SUB-SECT. 1.—C.

e i. — — — .]—A right of action to compel valuer to comply with the Acts as far as may be necessary to give effect to a valid claim for compensation ; but he has no right of action in the nature of appeal against the determination of the council or the valuation of the valuer.—HOGLE *v.* ERNESTOWN TOWNSHIP (1918), 41 O. L. R. 394 ; 13 O. W. N. 347 ; 41 D. L. R. 123.—**CAN.**

e ii. — — — *Mandamus.*]—The direction to the municipal council to award compensation under the Act of 1914 is mandatory ; & they may by *mandamus* be required to obey the statute.—NOBLE *v.* ESQUESING TOWNSHIP (1918), 41 O. L. R. 400 ; 13 O. W. N. 339 ; 41 D. L. R. 99.—**CAN.**

e iii. — — — — — — .]—If a township council fail to perform the duties imposed upon it by s. 18 of the Act of 1914, a *mandamus* may be granted to compel the council to make the inquiry directed by the sect. & award compensation.—HUDSON & HARDY *v.* RUDOLPH TOWNSHIP (. 46 O. L. R. 216.—**CAN.**

sf. — — *Wanton killing of licensed dog.*]—Notwithstanding the Act of 1917, B. C., s. 3, one is liable in damages for causing death or injury to an unlicensed dog in a sheep-protection district, if the injury is inflicted wantonly.—WILGRESS *v.* RITCHIE, [1920] 2 W. W. R. 421 ; 52 D. L. R. 543.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1. A.

154 ix. — — — .]—The owner of an animal in which by law the rule of property can exist is bound to take care that it does not stray into the land of his neighbour, & he is liable for any trespass it may commit, & for the ordinary consequences of that trespass. Whether or not the escape of the animal is due to the owner's negligence is immaterial.—WHALLEY *v.* VANDERGRAND [1919] 1 W. W. R. 87 ; 44 D. L. R. 319.—**CAN.**

154 x. — — *To remove cattle—Under Domestic Animals Act, R. S. A.*, 1922 (c. 67), *s.* 64.]—If lands of A. adjoin lands of B. without a fence between them, & the lands are within an extra- ipal area which has not been under s. 8 of the above Act, & of the lands have ever been a municipal or pound district, if 's cattle stray on to B.'s lands & B. notice to remove them, A. sufficiently complies with s. 64 of the above Act by removing them a reasonable distance on to his own land, even though this does not effect a removal.—R. (GAGAN) *v.* [illegible] [1923] 3 W. W. R. 660.—**CAN.**

156a. ——.]—MANTON *v.* BROCKLEBANK, No. 258a, *post.*

156b. ——.]—(1) For injury caused by horses or cattle to property on or adjoining a highway the owner is not liable in the absence of negligence or of wilful intention on his part.

(2) The bolting of a horse which has been left unattended in a public street is *prima facie* evidence of negligence on the part of the owner.—GAYLER & POPE, LTD. *v.* DAVIES (B.) & SON, LTD., [1924] 2 K. B. 75; 93 L. J. K. B. 702; 131 L. T. 507; 40 T. L. R. 591; 68 Sol. Jo. 685.

159. *Add. Citation* :—62 Sol. Jo. 161.

Add. Annotation :—*As to* (1) **Refd.** Richards *v.* Davies, [1921] 1 Ch. 90.

163a. Cat killing pigeons.]—In the case of a cat attacking pigeons it is necessary to prove *scienter* before the owner of the cat can be made responsible in law.—BUCKLE *v.* HOLMES, [1926] 2 K. B. 125; 95 L. J. K. B. 547; 134 L. T. 743; 90 J. P. 109; 42 T. L. R. 369; 70 Sol. Jo. 461, C. A.

166. *Add. Annotation* :—**Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773.

167. *Add. Annotation* :—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

168. *Add. Annotation* :—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

180. *Add. Annotations* :—*As to* (1) **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. *As to* (2) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

181. After this case add "*See, also*, BOUNDARIES, Vol. VII., pp. 281, 282."

183. *Add. Annotations* :—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75. **Refd.** Theyer *v.* Purnell, [1918] 2 K. B. 333.

187. *Add. Annotations* :—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. **Mentd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

194. *Add. Annotation* :—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

195. *Add. Annotations* :—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Hines *v.* Tousley

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176 iii. —— —— ——.]—Where a fence erected by one of two adjoining owners becomes by agreement, express or implied, the line fence & the other adjoining owner fences three sides of his land & joins on to the line fence, he must pay a just proportion of the then value thereof & thereafter bear an equal share of the costs of maintenance & repair, but it also vests in him all the rights of an owner in respect of the line fence. He is entitled to strengthen & repair it by adding strands of wire to prevent his cattle getting upon the land of his neighbour, & the latter has no right to remove the strands. If he does so, & the cattle get upon his land by his act, he cannot claim against the adjoining owner for resulting damages. —ARMSTRONG *v.* THOMPSON, [1923] 3 D. L. R. 74; 2 W. W. R. 609.—**CAN.**

h i. —— ——.]—A horse belonging to applt. was being grazed in a field which adjoined resp.'s farm, upon which he kept cattle, including a bull. The cattle were continually breaking through the dividing fence, & on one occasion the bull gored the horse. The fence between the properties was not a sufficient fence within Fencing Act, 1908:—*Held*: there was no evidence of [illegible] nce by resp. towards applt. & without proof of

[illegible] were not recoverable *v.* RAWLINS, [1924] N. Z. L. R. 333.—**N.Z.**

1 ii. ——.]—Where there exists a valid bye-law permitting animals to run at large in a municipality, an owner cannot be held to be guilty of negligence in allowing his animals so to run. —KOCH *v.* GRAND TRUNK PACIFIC BRANCH LINES CO., [1917] 1 W. W. R. 1120; 10 Sask. L. R. 35.—**CAN.**

1 iii. ——.]—Damage caused by a bull running at large contrary to Entire Animals Ordinance, s. 4, is recoverable though the property damaged is not surrounded by a lawful fence.—MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—**CAN.**

1 iii. ——.]—The owner of cattle rightfully running at large is not liable for damage to crops done by them on

[illegible] [1920] 2 W. W. R. 1007; 53 D. L. R. 394.—**CAN.**

1 iv. ——.]—Animals are not running at large when in charge of a herdsman. —R. *v.* PETERSON, [1920] 1 W. W. R. [illegible] 51 D. L. R. 191; 32 Can. Crim. [illegible].]—*Qu.* whether an action lies for damage done by animals trespassing on a crop when there is no municipal bye-law restraining them from running at large.—CLEARY *v.* HYDE, [1921] 3 W. W. R. 130.—**CAN.**

1 vi. ——.]—Plff. & deft. owned adjoining farms, & the line between the farms was unfenced. Deft. turned his cattle loose & they went on to plff.'s land & ate up his grain which was, to deft.'s knowledge, lying in stacks thereon:—*Held*: deft. was liable in damages.—DOBROLOWSKI *v.* DANYLAK, [1921] 2 W. W. R. 729.—**CAN.**

1 vii. —— ——.]—A bull, which has broken through from its owner's enclosed land on to adjoining enclosed land of another person & is without a herder, is running at large within Stray Animals Act.—R. *v.* BRADY, [1921] 3 W. W. R. 336.—**CAN.**

n i. —— ——.]—Where a municipal bye-law is passed pursuant to Stray Animals Act, R. S. S. 1920 (c. 124), to prohibit the permitting of horses to run at large, the duty imposed thereby is one towards the proprietors of cultivated land as defined in s. 2 (14) of the Act, & not towards the public at large.—OSADCHUK *v.* RUSSNIAK (1922), 63 D. L. R. 323; 15 Sask. L. R. 286; [1922] 1 W. W. R. 829.—**CAN.**

n —— ——.]—A municipality a bye-law providing that all animals should be allowed to run at large in the municipality with certain exceptions & except between certain dates. Another bye-law prescribed what should constitute a lawful fence. Nothing was said as to what should be the effect of a lawful fence, & no bye-law was passed for the purposes of Municipal Act, Man., s. 602 (d):—*Held*: the effect of the first-mentioned bye-law was to permit cattle, other than those excepted in it, to run at large between certain dates, & in this it ousted the common law liability of the owner of the cattle for damages by them when so running at [illegible], & such damages were not recoverable even if the land where the damage was done was surrounded by a lawful fence.

(2) The bye-law also provided that nothing therein contained should prevent the owner of any lands trespassed upon or of any property destroyed from waiving rights created by that bye-law & bringing his action in any [illegible] at ct. in consequence of any [illegible]:—*Held*: that provision gave no right of action taken away by the other bye-law provision. JUKES *v.* MISKELLY, [1923] 2 D. L. R. 561; 33 Man. L. R. 67; [1923] 1 W. W. R. 1057. **CAN.**

— *Remoteness of* [illegible] for personal injuries suffered by the rider of a horse from a kick by a neighbour's trespassing horse are not too remote where the trespassing horse's owner knows that the neighbour frequently rides on horseback, & where it is customary in the country to ride horses when bringing home horses or cattle. WHALLEY *v.* VANDERGRAND, [1919] 1 W. W. R. 87; 41 D. L. R. 319. **CAN.**

194 ii. —— ——.] Where a heifer owner intended to breed it to a certain thoroughbred registered bull, the owner of the heifer was given damages for the difference in value between the calf anticipated as the result of such breeding & the calf that was born as the result of a bull's trespass. Damage by reason of the possible influence [illegible] the strain of subsequent offspring held too remote & uncertain to be considered. MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162. **CAN.**

[illegible] eight" bull served plff.'s pure bred heifer:—*Held*: plff. was entitled to damages for the decreased value of the heifer caused by her growth being stunted & shape being affected by being bred at an early age, but not to damages based on a consideration of the effects on the minds of others of an erroneous theory that the heifer was liable to "throw back" to the first bull in future breeding.—COUSINS *v.* GRIFFITHS, [1920] 3 W. W. R. 702; 54 D. L. R. 650. **CAN.**

iv. —— ——.]—Deft. negligently allowed his mare to escape & go in another's field where she [illegible] & injured a farm boy while [illegible] being ejected. *Held*: the [illegible] was not too remote. HARRISON *v.* ARMSTRONG (1917), 51 N. S. R. 38.—**IR.**

195 iii. —— ——.]—The owner of a bull at large contrary to law must be held to have known that he would naturally seek to cover any heifer or cow which he can reach, & his covering the heifer of another owner on that owner's property & against his will is a trespass for which the owner of the bull is liable.—MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—**CAN.**

iv. —— ——.]—Deft.'s

(1926), 95 L. J. K. B. 773. **Refd.** Mansel *v.* Webb (1918), 88 L. J. K. B. 323; Musgrove *v.* Pandelis, [1919] 2 K. B. 43; A.-G. *v.* Cory, Kennard *v.* Cory, [1921] 1 A. C. 521; Rainham Chemical Works *v.* Belvedere Fish Guano Co., [1921] 2 A. C. 465; Hoare *v.* McAlpine, [1923] 1 Ch. 167; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75. **Mentd.** De Silva *v.* Korossa (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; Quebec Ry. Light, Heat & Power Co. *v.* Vandry, [1920] A. C. 662; Boynton *v.* Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Jefferson *v.* Derbyshire Farmers, [1921] 2 K. B. 281; Postmaster-General *v.* Liverpool Corpn. (1922), 92 L. J. K. B. 382; Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539; Cockburn *v.* Smith, [1924] 2 K. B. 119; Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1; Booth *v.* Thomas (1925), 42 T. L. R. 114; Ilford U. D. C. *v.* Beal, [1925] 1 K. B. 671; Noble *v.* Harrison, [1926] 2 K. B. 332; Smith *v.* G. W. Ry. (1926), 135 L. T. 112.

201. *Add. Annotation :* — **Consd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

202. *Add. Annotation :*— **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

203. *Add. Annotations :*— **Consd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

204. *Add. Annotations :*— *As to* (1) **Consd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

205. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

206a. —— ——.]—GAYLER & POPE, LTD. *v.* DAVIES (B.) & SON, LTD., No. 156b, *ante.*

208. *Add. Annotations :*—**Consd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44. **Refd.** Hardy *v.* C. L. Ry., [1920] 3 K. B. 459; Weld-Blundell *v.* Stephens, [1920] A. C. 956

214. *Add. Annotations :*—**Consd.** Paul *v.* G. E. Ry. (1920), 36 T. L. R. 344. **Refd.** Ellerman Lines *v.* Grayson, [1919] 2 K. B. 514; Saies *v.* Bristol Petroleum Co. *v.* G. W. Ry. (1920), 90 L. J. K. B. 1289; Admiralty Comrs. *v.* S.S. Volute, [1922] 1 A. C. 129; Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406. **Mentd.** The Manorbier Castle (1922), 129 L. T. 31.

216. *Add. Annotations :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

218. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Buckle *v.* Holmes, [1926] 2 K. B. 125. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

220. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

222. *Add. Annotation :*—*As to* (1) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

226. *Add. Annotation :*—*As to* (1) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

234. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

235. *Add. Annotation :*—*As to* (1) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

l on pltf.'s land which was not enclosed by a lawful fence. Pltf.'s son on horseback was chasing the cattle out when pltf. proceeded on foot to drive a steer through a gateway & was charged by the steer & injured. Deft. had no knowledge that the steer was of a vicious nature or liable to attack persons :—*Held :* pltf. could not recover damages, as the injury was not an ordinary consequence of the the claimed were too remote, & cause of the injury was pltf.'s action in the animal on foot which he not have done.—HARTON *v.* MORTON, [1921] 3 W. W. R. 803.—**CAN.**

197 ia. — — — — — — — —.]—A sheep owner cannot join the owners of trespassing dogs as defts. in one for damages for the loss of his McDERMOTT *v.* HUDSON (19 Tas. L. R. 21.—**AUS.**

197 iv. — — — — — — — —.]—damage is done by animals be to several owners the fact that the injured party cannot specify the amount of damage done by the animals of each owner does not disentitle him to substantial damages.—PIXLEY *v.* an, [1918] 2 W. W. R. 1055; 11 . R. 345; 42 D. L. R. 360.—**CAN.**

197 v. — — — — — — — —.]—The owners of different animals were held liable as joint tortfeasors for destruction of grain.—ALTHOUSE *v.* BESANA, [1919] 3 W. W. R. 725; 49 D. L. R. 158.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C.

200 ia. ——.]—Where by

& pltf. ran out to stop them & not recover damages as he failed to show that any person was in danger when he tried to stop the horses.—McDONALD *v.* BURR, [1919] 3 W. W. R. 825.—**CAN.**

206 x. — — — — *Mechanical precautions for control of horse.*]—TUCKER *v.* HENNESSEY, [1918] V. L. R. 56.—**AUS.**

w i. — — — — —.]—It is negligence for a man mounted on a bicycle to drive at 6.15 a.m. along the of a populated district, urging them round corners at a fast trot.—BARRETT *v.* HARDIE & THOMPSON, LTD., [1924] N. Z. L. R. 228.—**N.Z.**

215 iii. — — — *Liability of dog owner.*]—Deft.'s dog, to his knowledge, had for long had a habit of running after & barking at horses & carriages travelling upon highways :—*Held :* deft. was liable in damages for injury caused by the running away of horses frightened by the dog so acting.—BIRDSALL *v.* McMURTT (1917), 38 O. L. R. 587; 35 D. L. R. 260.—**CAN.**

215 iv. — — — — *Scienter.*]—Deft.'s dog jumped from an automobile & ran at pltf.'s horses & barked causing the horses to jump sideways, the pole strap to break, & the team to run away, causing loss & bodily injuries. The ct. found that the dog had, to deft.'s knowledge, the mischievous prope of doing such acts, & deft. was liable in damages.—SPAT *v.* [1919] 3 W. W. R. 210.—**CAN.**

iii. — — — —.]—Pltf.'s motor collided with a dark brown heifer belonging to deft. which had strayed from deft.'s unfenced land & came suddenly out on to the highway from the land of an adjoining owner; the car was o injury. There was no negligence in the driving or management of the car :—*Held :* deft. was not liable to pltf.—HALL *v.* WIGHTMAN, [1926] N. 92.—**IR.**

226 i. — — — *Sheep—Defective fence—Natural propensity.*]—A motor cyclist was injured by a collision in daylight with a sheep upon a public road. Pursuer averred that defender was negligent in knowingly failing to keep his fences in such repair as would prevent his sheep from straying on to the road, &, in any event, in allowing his sheep to graze upon the road :— the accident was not the natural probable result of the negligence .—FRAZER *v.* PATE, [1923] S. C. 748; 60 Sc. L. R. 470.—**SCOT.**

sk. *Animals running "at large"—Dog—Biting pedestrian.*]—The owner is liable in damages only if he knew that the dog was viciously disposed.—BOWEN *v.* LIGHTFOOT, [1920] 2 W. W. R. 153; 32 D. L. R. 305; 30 Man. L. R. 337.—**CAN.**

sl. — — — *Horses — Collision with motor car.*]—The owner is *primâ facie* liable only for such damages as a horse is likely to commit if allowed to stray. The doctrine of *scienter* applies, & the case is in the same class as that of a horse biting or kicking a person on the .—OSADCHUK *v.* RUSSNIAK 3 D. L. R. 323; 15 Sask. L. R. [1922] 1 W. W. R. 829.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—D.

am. *Person in unfenced garden—from railway yard.*]—The knocked down & injured pltf., but was not vicious, but nervous & excitable :—*Held :* pltf.'s action to recover damages for her injuries failed. —STRIGHT *v.* CRATO (1920), 48 O. L. R. 324; 56 D. L. R. 105.—**CAN.**

238. *Add. Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 1 K. B. 406.

239. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Hines *v.* Tousley (1926), 95 L. J. K. B. 773. **Refd.** Mansel *v.* Webb (1918), 88 L. J. K. B. 323; Musgrove *v.* Pandelis, [1919] 2 K. B. 43; A.-G. *v.* Cory, Kennard *v.* Cory, [1921] 1 A. C. 521; Rainham Chemical Works *v.* Belvedere Fish Guano Co., [1921] 2 A. C. 465; Hoare *v.* McAlpine, [1923] 1 Ch. 167; Cockburn *v.* Smith, [1924] 2 K. B. 119; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75; Booth *v.* Thomas (1925), 42 T. L. R. 114; Noble *v.* Harrison, [1926] 2 K. B. 332; Smith *v.* G. W. Ry. (1926), 135 L. T. 112. **Mentd.** De Silva *v.* Korossa (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; Quebec Ry. Light, Heat & Power Co. *v.* Vandry, [1920] A. C. 662; Boynton *v.* Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Jefferson *v.* Derbyshire Farmers, [1921] 2 K. B. 281; Postmaster-General *v.* Liverpool Corpn. (1922), 92 L. J. K. B. 382; Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539; Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1; Ilford U. D. C. *v.* Beal, [1925] 1 K. B. 671.

243. *Add. Annotations :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Buckle *v.* Holmes (1925), 95 L. J. K. B. 158.

246a. Bull attacking cow—Bull in auction yard.]—In an action for damages arising out of an attack on a cow in an auction yard by a bull which was in charge of deft.'s servants, but otherwise unsecured :—*Held :* there was no presumption in law that a bull would attack a cow in such circumstances, & for pltf. to succeed it was necessary for him to prove negligence in not having anticipated a probable danger; further, if such negligence were proved, it would be no answer for deft. to set up absence of *scienter*.—HINCKES *v.* HARRIS (1921), 65 Sol. Jo. 781.

258a. Mare attacking horse—Strange mare turned into field with horse.]—Trespass to person or goods by an animal in which there is at common law a valuable property, such as horses & cattle, does not generally render its owner liable.

Deft. put a mare into a field in which there was a horse belonging to pltf. without notifying pltf. The mare kicked the horse, which had to be destroyed. No *scienter* was proved in deft., but it was found by the deputy county ct. judge that the propensity of horses running loose to injure one another in sport or quarrel was common knowledge :—*Held :* (1) the mare was not within the class of dangerous animals which the owner must keep at his peril according to the rule in *Fletcher* v. *Rylands* (*see* No. 195); (2) deft. was entitled to assume that the mare, being *mansuetæ naturæ*, was an innocent animal, &, having no notice of any fact indicating the contrary, was not under any duty towards pltf. to give notice of his intention to place the mare in the field, or to have a person on the watch or in charge of her, & on the whole deft. was not liable either for breach of an absolute duty or for negligence.—MANTON *v.* BROCKLEBANK, [1923] 2 K. B. 212; 92 L. J. K. B. 621; 129 L. T. 135; 39 T. L. R. 314; 67 Sol. Jo. 455, C. A.

...ations :—*As to* (2) **Apld.** Buckle *v.* Holmes, [1926] 2 K. B. 125. **Refd.** Gayler & Pope *v.* Davies [1924] 2 K. B. 75.

260. *Add. Citations :*—6 Exch. 697; 17 L. T. O. S. 158; 155 E. R. 724.

Add. Annotation :—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

261. *Add. Annotations :* — *As to* (1) **Refd.** Hardy *v.* C. L. Ry., [1920] 3 K. B. 459. *As to* (2) **Refd.** Fairman *v.* Perpetual Investment Bldg. Soc., [1923] A. C. 74; Manton *v.* Brocklebank, [1923] 1 K. B. 406.

264. *Add. Annotations :*—*As to* (1) **Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431. *As to* (2) **Refd.** Baker *v.* James, [1921] 2 K. B. 674; Lefang *v.* Ottawa Electric Ry., [1926] A. C. 725.

267. *Add. Annotation :* — **Mentd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

270a. —— **Mare kicking horse.**] — MANTON *v.* BROCKLEBANK, No. 258a, *ante*.

274. *Add. Annotations :* —**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. **Apld.** Buckle *v.* Holmes (1925), 95 L. J. K. B. 158. **Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773.

274a. — — ——.] — The owner of a dog, which was a well-behaved dog, & against whose character nothing was known :—*Held :* not liable to indemnify an employer in respect of compensation which the employer had to pay under Workmen's Compensation Acts to the employee, who had been injured by an accident caused by the dog.—HINES *v.* TOUSLEY (1926), 95 L. J. K. B. 773; 135 L. T. 296; 70 Sol. Jo. 732; 19 B. W. C. C. 216, C. A.

275. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Buckle *v.* H... *v.* HIGGINS, 2 I. R. 110.

...]—It is n... part of ... owner of a ... towards n... to ... care to ... from ... in an o... on the ... whose ... known ... not to ... the stallion ... in which, as ... will be liable in damages if injury ensues.—MATHESON *v.* STUCKEY, [1921] V. L. R. 637.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—B. (a).

245 i. *Vicious animals in general—Duty to keep under control.*]—If an owner of a dangerous animal knows it to be dangerous & neglects to keep it safe, he is liable in damages for injuries or death caused by it.—TARASOFF *v.* ZIELINSKY, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—**CAN.**

245 ia. —— ——.]—In an action for damages for the death of a person killed by a bull known to be dangerous allowed to be at large on the farm where deceased lived, a defence of contributory negligence cannot be supported by the fact that deceased, though knowing of the possible danger, went about her ordinary business on the farm, in the course of which she was killed.—TARASOFF *v.* ZIELINSKY, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—**CAN.**

245 iii. ——.]—While deft.'s servants were unloading cattle at a railway station a bullock "got wild" on the platform, rushed upon adjoining ... was driven back, escaped ... a gate, ran through the ... of the city, & injured pltf. :— ... the bullock on emerging ... railway wagon had displayed *wild condition to deft.'s servants* ... in such a way as to deprive them of benefit of the doctrine of the *prima facie* harmlessness of domestic animals as frequenters of the highway, & the duty of controlling it as though it belonged to the class of animals *naturæ* had fallen on deft. &

PART III. SECT. 2, SUB-SECT. 3.

p i. —— —— *To order dog to be kept under control—Person in charge of dog.*]—WALKER *v.* BRANDER, [1920] S. C. (J.) 20; 57 Sc. L. R. 651.—**SCOT.**

[1926] 2 K. B. 125. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

277. *Add. Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K B. 212.

325. *Add. Annotation to* (2) **Apld.** Stearn *v.* Prentice, [1919] K B.

325a. **Rats – Damage to crops.**]—Defts. carried on the of bone manure manufacturers on premises near pltf.'s farm. For the purpose of their business they had on their premises a heap of bones, which caused large numbers of rats to assemble there. The rats made their way from defts.' premises on to pltf.'s land, & ate his corn, causing substantial loss, in respect of which pltf. claimed damages from defts. It was not proved that the bones kept by defts. were excessive or unusual in quantity :—*Held :* no cause of action had been established against defts.—STEARN *v.* PRENTICE BROTHERS, LTD., [1919] 1 K. B. 394 ; 88 L. J. K. B. 422 ; 120 L. T. 445 ; 35 T. L. R. 207 ; 63 Sol. Jo. 229 ; 17 L. G. R. 142, D. C.

332. *Add. Annotation :*—**Refd.** A.-G. *v.* Hodgson, [1922] 2 Ch. 429.

338. *Add. Annotations :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235. **Mentd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

Part IV.—Agistment.

342. *Add. Annotation :*—**Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

342a. — **Whether breach of covenant not to underlet.**]—Where the tenant of a farm covenants not to underlet or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep— *i.e.* g herbage, of his pasture lands for a period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country.

Semble : agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the RICHARDS *v.* DAVIES, [1921] 1 Ch. 90 ; 89 L. J. Ch. 601 , 124 L. T 238 ; 65 Sol. Jo. 44.

343. *Add. Annotation :*—**Refd.** Coldman *v* Hill, [1919] 1 K. B. 443.

344. *Add. Annotation :*—**Refd.** Coldman *v* Hill, [1919] 1 K. B. 113.

346. *Add. Annotation :*—**Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

346a. —— **Animal stolen—Duty of agister.**]—An agister of cattle does not discharge himself of his duty as a bailee for reward by proving that they were stolen without his default, if by using reasonable diligence he could have recovered them.

If, having failed to use such diligence, he is sued for loss of the cattle, he must prove, in order to discharge himself, that such diligence would have been unavailing ; it is not for the bailor to prove that it would have retrieved the loss.

A farmer accepted certain cattle for agistment. Some of them were stolen without his default. After learning that they were missing he made no effort, whether by informing the owner or the police, or otherwise, to recover them. It was doubtful whether any reasonable attempt on his part would have led to their recovery :— *Held :* he was liable for their loss. COLDMAN *v.* HILL, [1919] 1 K. B. 443 ; 88 L. J. K. B. 491 ; 120 L. T. 412 ; 35 T. L. R. 146 ; 63 Sol. Jo. 166, C. A.

PART IV.

b l. — *Construction.*]— y a contract for d pltf. agreed to make properties for the agistment of d 's sheep. The of payment w week, £500 to be paid when the arrived, £200 in six months, the when the sheep the payment.

to the number of sheep on the properties from time to time ; the contract was one for making available the area of land agreed on for the sheep, & included the taking of the sheep agisted at the a le they were in ca tody.—SPRING *v.* YOUNG, [S. A. S. R. 116.—**AUS.**

344 xii. —— *Loss of* Pltf. was the owner of a mare which he delivered to deft for agistment in his paddock of 6,000 acres, which paddock was heavily timbered & covered with ys. After the mare had re- in the paddock for some time, pltf. requested the delivery of the two months' time. Deft. urs to find the only saw it on one occas de many attempts to the mare, but without deft. was not liable for the value of the mare, there no evidence of negligence.—I r. WATERS (1920), 22 W. A. L. R. **AUS.**

344 xiii. — *as within time* A er of sheep were ce rendering it probable that these had been driven off the run :— *Held :* an agister of sheep must show that he took reasonable care to see the sheep were on the agistment area, & failure to detect this loss within a was clear evidence of ing r. YOUNG, [1923] S. A. S. R. 116.—**AUS.**

344 xiv. —— ——.]—An agister is bound to take reasonable care of the animal entrusted to him, & when the owner comes for it, if he cannot produce it he must show that he took all cautions against its carance.—Comstock *v.* ASHLEY, [1917] 1 W. W. R. 1412 ; 23 B. C. R. 476 1.—**CAN.**

344 xv. —— —— *Onus of* ring]—In case of loss of le in the care of an agister, the on him to show circumstances on his part.— [1920] 3 W. W. R. 123 ; 54 D. L. R. 150.—**CAN.**

s have been delivered into the custody of an owner of asture lands to be kept & pastured by him in return for a money payment, it is his duty to see that the horses are provided with sufficient food & water, & if he neglects these duties & a loss through death or a loss through depreciation is thereby incurred he is liable in damages.—METX *v.* (1922), 70 D. L. R. 14 ; [1922] 3 W W. R. 660.—**CAN.**

356 iii. ——.]—An no lien, in the absence of special agreement, upon the animals he *Re* JORGENSON, [1923] 2 W. W. R. 600. —**CAN.**

356 iv. —— *Or statute.*]—An agister has a lien on the pastured animals under Possessory Liens Act, R.S.A., 1922 (c. 104), but not under Livery Stable-Keepers Act, R.S.A., 1922 (c. 107).—SPARLING *v.* WARD, [1925] 2 D. L. R. 922 ; [1925] 2 W. W. R. 181.—**CAN.**

362 i. —— *For malicious injury.*]—Appet. had cattle on his land under contracts with the owners. cattle were maliciously driven off the lands & injured :—*Held :* appet. as bailee in could claim compensation for the cattle entrusted to his care.—W v. TIPPERARY COUNTY COU L, [1920] 2 I. R. 233 ; 54 I. L. R. 77 IR.

Part V.—Hiring.

371. *Add. Annotation :*—**Refd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

377. *Add. Annotation :— As to* (4) **Refd.** Kemp *v.* Elisha, [1918] 1 K. B. 228.

Part VI.—Sale and Exchange of Animals.

384. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

390a. —— —— **Resale of horse at loss—Form of action.**]—A vendor gave a warranty of sound workable condition on the sale of a horse. The warranty was fulfilled, but the purchaser wrongfully refused delivery, & returned the horse. The vendor then put it up at auction as " in dispute," & without a warranty, when it was sold for about £40 less than the contract price. In an action for the difference between the price realised at the auction & the contract price :—*Held :* (1) this was not the proper form of action ; (2) the action must be for damages ; (3) the conditions of the auction sale were not a test of the value of the horse, the auction being of a horse " in dispute," & without warranty, & quite different from the original contract conditions ; (4) pltf. was not entitled to more than nominal damages, as he had failed to prove his damages to be the difference between the contract price & the price realised at the auction. - MACKLIN *v.* NEWBURY SANITARY LAUNDRY (1919), 63 Sol. J. C.

401 *Add. Annotation :* — **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

PART V.

369 xv. —— —— —— ——.]—If a hired horse is in a sound condition when taken out, & it is brought back injured, the *onus* of proof in a claim for damages for negligence is on deft. The hirer is bound to treat the horse with the degree of care which a person of ordinary discretion would use towards his own, but if the horse is so treated & nevertheless receives an injury the hirer is not liable in damages for such injury.—REINSETH *v.* CAMPBELL (1920), 52 D. L. R. 357.—**CAN.**

369 xvi. —— —— —— ——.] - Where a person hires an animal & it dies while in his custody, the *onus* is upon him to establish that he took care of it. That care is the care which a prudent man would take of his own animal under the circumstances.—MURRAY *v.* COLLINS, [1920] 2 W. W. R. 845 ; 53 D. L. R. 120.—**CAN.**

369 xvii. —— —— ——.]—Deft. hired a horse from pltf. to drive from T. to L. & return. At a distance of between six & eight miles from S., the horse fell lame in the right hind leg. Deft. drove it to S., put it in a livery stable & gave instructions to have the hoof of the right hind leg re-shod. Deft. hired another horse & continued his journey to L., a distance of over eight miles. He returned next day, took the horse out, & finding that it was not then lame, started with it on the return journey. After travelling about three miles, the horse again fell lame & kept getting a little lamer all the way to T. The journey from S. to T., a distance of twenty-two miles, took seven & one-half hours. There
no evidence as to what caused the
lameness There was no evi-
that there was, between the
place where the horse fell lame & T.
any suitable place in which the horse could have been placed & cared for, or where deft. could have hired another horse to continue the return journey : —*Held :* as the lameness when it first developed on the return journey
not shown to have been of a more
...ous nature than often happens to a horse which may nevertheless walk, or even trot slowly, fifteen to twenty miles without serious distress, deft. could not be held guilty of
until he had travelled a
to satisfy himself that the lameness was increasing so as to make it dangerous to the welfare of the horse to continue the journey.—GAGNON *v.* LANGIS (1920), 48 N. B. R. 76.—**CAN.**

374 ii. —— *Bill of sale granted by bailee—Rights of grantee.*]—A., the owner of twenty seven cows depasturing on his farm, agreed to lease his farm & cows to G. for a term of years, & it was agreed that G. should have the right to purchase the farm & stock at any time during the term. G. was given possession of the stock & farm. G. gave to applt. a bill of sale over the cows. A. recovered possession of his farm & cows from G., & shortly thereafter applt. seized & sold the cows under his bill of sale. Thirty-four cows were seized & sold, only nine of which were of the original herd, the balance having been bought by G. during the time he had possession of the farm. A. claimed damages for the seizure : —*Held :* it had not been shown that the cattle substituted by G. for those originally bailed to him had become the property of A., who was entitled to damages only in respect of the cows originally bailed.—NORFOLK CO-OPERATIVE DAIRY CO., LTD. *v.* ALLEN, [1924] N. Z. L. R. 136.—**N.Z.**

374 iii. —— *Loss by bailee—Negligence.*]—In an action for the value of a horse which was lost after it had been hired to deft. under an agreement whereby the latter undertook to take " good care in every way " thereof, it appeared that the horse, which was unbroken, was received by deft. (into a pasture belonging to a neig of deft., & deft. went to see it every other day. The pasture was surrounded by a fence of two strands of wire, & the horse got out twice during the winter but was put back. It disappeared about the end of the following April. The fence was down in one place, & the evidence showed a custom among the farmers in the neighbourhood to allow horses not in use to run at large during the winter. While deft. was given the right to work the horse, it was shown that it was not customary in that locality to break horses until the spring :—*Held :* deft. had taken sufficiently good care of the horse & was not liable for its loss.—ZIMMERMAN *v.* ARCHER (1922), 63 D. L. R. 399 ; [1922] 2 W. W. R. 524.—**CAN.**

380 i. *Contract - Covering mare - Damages for breach.*] Breach of a contract to breed mares to a stallion is not a ground for damages, in the absence of evidence upon which such damages may be estimated with reasonable certainty.—SINCLAIR *v.* WALKER, [1917] 2 W. W. R. 321.—**CAN.**

PART VI. SECT. 1.

11. - *Sale of bull - Bull sterile.*] At an auction sale advertised " as pedigree stock sale " resp. purchased from applt. a bull described in the sale catalogue under the heading " Jersey Bulls " as " Lot 75, Bull Harbour Light." The conditions of sale expressly negatived the existence of any warranties on the vendor's part. At the time of the sale the bull had not been used, but subsequently was found to be sterile. This condition was shown to be a latent defect not discoverable upon examination. In an action by resp., claiming damages : — *Held :* as the capacity for procreation was not, by implication, a part of the description, & as the bull complied in all other respects with the description, resp. was without remedy.- DELL *v.* QUILLY, [1924] N. Z. L. R. 1270.—**N.Z.**

21. - - -.] *Held :* oral evidence that it was part of the agreement for sale of a stallion that the pedigree-papers should be delivered to the purchaser within a few days of the sale, being in contradiction of the written
...
KAMLOOPS *v.* COWAN, [1925] 2 D. L. R. 712 ; [1924] 2 W. W. R. 126, 21 Alta. L. R. 366, *varg.* [1923] 4 D. L. R. 491, [1923] 3 W. W. R. 610 —**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

396 vi. —— -] An auctioneer in a
about nine years old " in
of the vendor who did not
it. A note given for the balance of the price had indorsed thereon : " Given for one bay mare nine years old " The purchaser believed the
of that age : *Held :* the
amounted to a warranty, & the vendor was bound thereby.—ALLEN *v.* SMITH, [1920] 3 W. W. R. 645.—**CAN.**

409. *Add. Annotation :*—**Refd.** Manchester Liners *v.* Rea, [1922] 2 A. C. 74.

410. *Add. Annotations :*— **Refd.** Manchester Liners *v.* Rea, [1922] 2 A. C. 74 ; Baldry *v.* Marshall, [1925] 1 K. B. 260.

416. *Add. Annotation :*—**Refd.** Said *v.* Butt, 3 K. B. 497.

453. *Add. Annotation :* — **Mentd.** Barber Deutsche Bank (Berlin) London [1919] A. C. 304.

Part VII.—Carriage of Animals.

517. *Add. Annotations :*— **Consd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186. **Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

518. *Add Annotation :*— *As to* (2) **Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

522. *Add. Annotations :*—**Refd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186 ; L. &. N. W. Ry. *v.* Hudson, [1920] A. C. 324.

523. *Add. Annotation :*—**Mentd.** Denholm *v.* Shipping Controller (1920), 124 L. T. 378.

526. *Add. Annotations :*— **Refd.** Hemmings *v.* Stoke Poges Golf Club, [1920] 1 K. B. 720. **Mentd.** Phillips *v.* Britannia Hygienic Laundry Co. (1923), 93 L. J. K. B. 5.

530. **For "Expenses reasonably—Incurred in disinfecting," etc., read "Expenses reasonably incurred—In disinfecting," etc.**

531. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; Transoceanica Soc. Italiana Di Navigazione *v.* Shipton, [1923] 1 K. B. 31 ; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

535. *Add. Annotation :*—*As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

542. *Add. Annotation :*—*As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

Part VIII.—Wild Birds.

**563a. — — —

Held: the magistrate was justified in taking into consideration all the circumstances of the case, including the condition of the birds when exposed for sale & the fact that they had to be kept in Ireland for some time in order to endure the journey & arrive alive, & also the length of the journey, in order to arrive at the conclusion that the birds were recently taken.—HARRIS v. LUCAS, [1910] 2 K. B. 291; 88 L. J. K. B. 1082; 121 L. T. 317; 83 J. P. 208; 35 T. L. R. 486; 17 L. G. R. 421; 26 Cox, C. C. 468, D. C.

564. [illegible] cas.

Part X.—Cruelty to and Killing, Maiming, and Wounding Animals.

NOTE.—The Act now in force in England is Protection of Animals Act, 1911 (c. 27), as amended by Protection of Animals Act (1911) Amendment Acts, 1912 (c. 17), & 1921 (c. 14). In considering the cases in Sect. 1 of this Part, regard should be had to their dates & the Act under which they were decided.

568. *Add. Annotation:*—**Mentd.** Gould v. Houghton, [1921] 1 K. B. 509.

572a. Shooting trespassing dog—No attempt to drive dog away before shooting.]—A farm labourer shot at a dog which was trespassing on his master's land, & wounded it. The dog was not doing damage & deft. made no effort to drive it away before he shot it, & the justices found that shooting was not necessary:—*Held:* he was guilty of "cruelly ill-treating" the dog within Protection of Animals Act, 1911 (c. 27), s. 1. BARNARD v. EVANS, [1925] 2 K. B. 791; 94 L. J. K. B. 932; 133 L. T. 829; 89 J. P. 165; 41 T. L. R. 682; 28 Cox, C. C. 69, D. C.

574. *Add. Annotation:* **Distd.** Barnard v. Evans, [1925] 2 K. B. 791.

576. *Add. Annotation:* **Distd.** Barnard v. Evans, [1925] 2 K. B. 791.

613. *Add. Annotation:*—**Refd.** R. v. Wood, *Ex p.* Farwell (1918), 87 L. J. K. B. 913.

651. *Add. Citation:*—26 Cox, C. C. 113.

653. *Add. Annotation:* **Refd.** Nye v. Niblett (1918), 87 L. J. K. B. 590.

654. *Add. Annotation:* **Consd.** Horton v. Gwynne, [1921] 2 K. B. 661.

656. *Add. Annotation:* **Refd.** Nye v. Niblett (1918), 87 L. J. K. B. 590.

Part XI.—Diseased Animals.

657. *Add. Annotation:*—**Refd.** Theyer v. Purnell, [1918] 2 K. B. 333.

659. *Add. Citation:*—88 L. J. K. B. 263.

664. *Add. Annotation:* —**Refd.** Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

690a. [illegible] **"Double dipping" Meaning.**] *Held:* the words "double dipped" meant twice dipped & not dipped for a second time after

PART X. SECT. 1, SUB-SECT. 1.

sb. [illegible] *horse found starving—Whether owner control.*]—*Held:* [illegible] could not be convicted of ill-treatment under Prevention of Cruelty to Animals Act, 1890, s. 3 (*a*), as he was not in a position to exercise control over the animal at the time of the ill-treatment.—R. v. NAZIR WAZIR (1919), I. L. R. 44 Bom. 159.—**IND.**

sc. *Permitting animal injured on ship to land—Master of ship ignorant of animal's condition.*]—*Held:* the master's want of knowledge was no defence.—M'LAREN v. SMITH, [1923] S. C. (J.) 91.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 2.

sd. *C* [illegible] *train—With eyes stitched* [illegible] had committed no offence under Prevention of Cruelty to Animals Act, 1890, s. 3, cl. (*b*), for the cruelty was caused by the persons who stitched the eyes & not by the manner or position in which the birds were carried in the train.—R. v. IBRAHIM MEER SHIKAR (1917), I. L. R. 41 Bom. 654.—**IND.**

PART X. SECT. 1, SUB-SECT. 3.

sf. *Commitment for trial for overdriving—Jurisdiction of one justice.*]—R. v. NELSON (1916), 28 Can. Crim. Cas. 276.—**CAN.**

PART XI. SECT. 1.

662 vi. [illegible]] A contract for the sale of animals affected with a contagious or infectious disease is [illegible] 1 K. B. [illegible] 55), s. 38, whether or not the seller knows that the animals are [illegible] BALDWIN v. SNOOK, [1918] 2 W. W. R. 311; 40 D. L. R. 433.—**CAN.**

662 vii. [illegible]] On a sale without warranty of an animal known to the seller to be affected with a certain contagious disease there is no common-law duty upon the seller to warn the buyer of the disease, where the latter is reputed to be possessed of more than ordinary skill & knowledge in the treatment of animals, the disease in question fairly common in [illegible] & buyer knows that the animal is suffering from some complaint, although not the particular nature of it, [illegible] until he has had the [illegible] Diseases Act, R. S. C. 1906 (c. 75), does not give a [illegible] of action to a buyer of animals who suffers damage from a [illegible] is illegal under that Act.—O'MEALEY v. SWARTZ, [1918] 3 W. W. R. 9[illegible].—**CAN.**

662 viii. ——.]—In view of Orders in Council authorised under s. 35 exempting tuberculosis from the effect of Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), s. 35, *Baldwin v. Snook*, No. 662 vi., *ante*, was held not applicable to [illegible] illegal sale of cattl[illegible] WILLIAMS & McCARTHY, Ltd. v. [illegible], [1921] 2 W. W. R. 32.—**CAN.**

662 ix. [illegible] Where [illegible] exposed for sale by a vendor & he knows that there [illegible] disease [illegible] to a penalty under [illegible] Contagious Diseases Act, & if [illegible] sale of the animals under [illegible] the sale is [illegible] N[illegible] or to the [illegible] h of [illegible] no [illegible] ...a [illegible] ...on, the [illegible] ...is [illegible] ...section [illegible] recover any [illegible] and he him to the [illegible] D. L. R. [illegible] W. W. R. **CAN.**

PART XI. SECT. 2, SUB-SECT. 3.

[illegible] *disease.*]—A, obtained a garbage licence [illegible] "In

the first prescribed dipping.—ADAMS GALLOWAY (1925), 23 L. G. R. 588, D. C.

697. *Add. Annotation :—Generally,* **Mentd. Everett** *v.* **Griffiths, [1924] 1 K. B. 941.**

NOTE.—It has been found desirable to add the following Part :—

Part XII.—Breeding of Animals.

Statutory control—Horse breeding.]—*See* Horse Breeding Act, 1918 (c. 13).

Hire of stallion's services - Right of lien on mare

consideration of the granting of a licence to me I hereby agree . . . (4) to forfeit all claim to compensation, in case it is necessary to destroy any of my hogs, as a result of hog cholera, if can be shown that the infection came from some other source than garbage feeding ":—*Held :* the onus of proving that the cholera in question came from some other source was upon *v.* R. (1922) 65 D. L. R. 398 ; 21 Exch. C. R. 36 **CAN.**

PART XI. SECT. 2, SUB-SECT. 5.

sl. *Power to make bye-law—Pro-admission of infected animals municipality.*]—To provide in a bye-law that no animal affected with any infectious or contagious disease shall be brought into the municipality was held to be beyond the powers of a municipal council under Municipal Act. —R. *v.* MOULD, [1920] 2 W. W. R. 540 ; 52 D. L. R. 302.—**CAN.**

PART XII.

am. *Statutory control—Horse breeding—Refusal of certificate of registration of stallion—Registration of Stallions Act,* 1916.]—At the trial of an action by a person, who was the owner of a stallion, against the members of the Board of Control & Appeal under the above Act for wrongful refusal to consider an appeal against the refusal of a certificate of registration, it appeared that pltf. was not actual owner but had control & management of the animal :—*Held :* he was entitled to maintain the action.—DUTTON *v.* EVANS (1920), 16 Tas. L. R. 45.—**AUS.**

Hire of stallion's services—Liability of owner of stallion—Injury to mare.]—*See* Vol. II., p. 220, cases q, r.

Mare improperly served by stallion.] Vol. II., p. 220, cases s, t, u.

sp. *Breach of contract.*]—*v.* WALKER, No. 380 i., *ante.* **-CAN.**

—For expense of covering.]—*See* original volume, p. 257, No. 380.

Increase in animals—Who entitled to.]—*See* original volume, pp. 212, 213.

ARBITRATION.

Part I.—The Submission.

24. *Add. Annotation* :—**Reld.** Anglo-Newfoundland Development Co. v. R., [1920] 2 K. B. 214.

26. *Add. Annotations* :—**Reld.** Anglo-Newfoundland Development Co. v. R., [1920] 2 K. B. 214. **Mentd.** Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc., [1925] Ch. 769.

26a. —— **Verbal agreement to grant royalties—Amount to be settled by arbitration—Refusal of grantee to arbitrate.**]—In 1913 a patent was granted for "Improvements in winches for operating the rope of a duplex derrick." Between the times of the filing of the provisional & complete specifications, the patentee, under a verbal agreement, entered the service of a co. engaged in making windlasses as technical adviser & engineer draughtsman; & the co., while the patentee was in their employment, made & sold the patented windlasses. In 1919 the patentee commenced an action against the co., alleging that it was a term of the verbal agreement that, during pltf.'s service, the co. should have pltf.'s licence to make & sell windlasses under the patent, at a reasonable royalty, &, failing agreement between the parties, at such royalty as might be settled by arbn. He contended that he would have received at least 5 per cent. on the selling price of the windlasses. Defts. denied that they had agreed to accept a licence from pltf.:—*Held*: pltf. had proved that the agreement for a licence had been made; he was entitled to a reasonable royalty; &, as the agreement was verbal, & defts. refused to refer the matter to arbn., the matter could not go to arbn. It was directed that the matter should be referred to an official referee for inquiry & report under sect. 13 of the above Act.—FLEMING v. DOIG (J. S.) (GRIMSBY), LTD. (1921), 38 R. P. C. 57.

36a. Reference under National Health Insurance Regulations of Insurance Commissioners.]—By an agreement between a medical practitioner on the panel & the insurance committee of a county, the practitioner agreed to give medical treatment to insured persons, & by clause 1 the National Health Insurance (Medical Benefit) Regulations (England), 1913, were incorporated. By clause 14, "any dispute or question arising between the committee & the practitioner . . . relating to the construction of this agreement or the rights & liabilities of the committee or the practitioner . . . hereunder shall be to the Comrs." By reg. 51 of the r "Where under the provision of these regulations or of any agreement made between the committee & a practitioner . . . is referred, or any appeal from a decision of the committee is made to the Comrs. the Comrs. shall determine such questions or appeal in such manner as they think fit, & if in the opinion of the Comrs. a hearing is required they may authorise any two or more of the Comrs. to hear & determine such question or appeal, & any decision of the Comrs. or any of them made under this article shall be final & conclusive." A dispute having arisen under the agreement, the practitioner brought an action against the committee in respect thereof, & the committee applied under the Act of 1889, s. 4, to stay the action:—*Held*: the action must be stayed (PICKFORD, L.J. & SARGANT, J.) upon the ground that there was a "submission" to arbn. within the Act of 1889, s. 27 (BANKES, L.J.), upon the ground that under reg. 51 a special tribunal was constituted with special powers for determining disputes between practitioners & the committee.—CLEMENTS v. COUNTY OF DEVON INSURANCE COMMITTEE, [1918] 1 K. B. 94; 87 L. J. K. B. 203; 118 L. T. 89; 82 J. P. 71, C. A.

41. *Add. Annotation* :—**Consd.** O'Rourke v. Darbishire, [1920] A. C. 581.

44a. —— **Appeal.**]—Where proceedings

PART I. SECT. 2.

d l. —— —— *Informal extension of written submission amounting to new parol submission.*]—An award was not made within the time fixed by the written submission to arbn. nor was the time extended. The arbitrators proceeded after the expiry of the time, both parties appearing before them & taking part in the proceedings, & the award was made & not appealed from or moved against, & had ever since been acted upon:—*Held*: a parol submission must be taken to have been made & to include the terms contained in the written one, & the award to have been made pursuant to the parol submission.—HARRISON v. HARRISON 41 O. L. R. 195; 13 O. W. N. 3.—**CAN.**

10 v. —— —— *Signature of one of of documents—Forming part of*]—A submission or written

to submit differences to arbn. may be collected from a series of documents, even though connected by parol evidence, & signature of any document forming part of the ment is sufficient to bind the so signing to the submission o in the agreement.—SUKHAMAL BAN- ; v. HABN LAL KEDIN & Co. I. L. R. 42 All. 525.—**IND.**

—— *General requisites.*]—An made by arbitrators is not invalid on the ground that in the to arbn. the a is stated merely in general terms, when the award itself shows that the nature of the to the v. MAHANATH GANESH BHAGAT 23), I. L. R. 2 Pat. 554.—**IND.**

lli. -]—A submission to to tl

in : of

ty to to get the l by arl —BURTON v. CITY LAN LTD. (1925), 1. L. R. 49

PART I. SECT. 3, SUB-SECT. 1.

from constitute a ision to arbn., but a provision for

INSURANCE Co., [1925] 1 D. L. [1925] 3 W. W. R. 729.—**CAN.**

PART I. SECT. 3, SUB-SECT.

42 lli. —— ——.]—In an act k of er the parties agreed to trial a & en Jurymen t of tl A for pltf. ct. had k no appeal l D. L. R. 940.—**CAN.**

taken out of the ordinary *cursus curiæ*, with the assent of the parties, the decree of the ct. below cannot be regarded as the award of an arbitrator, so as to deprive either party of the right of appeal, unless there has been an attempt to give the ct. a jurisdiction which it does not possess, or unless the procedure has been so violently strained as to be put entirely out of its course.—PISANI *v.* A.-G. FOR GIBRALTAR (1874), L. R. 5 P. C. 516; 30 L. T. 729; 22 W. R. 900, P. C.

nnotations: —**Mentd.** Readdy *v.* Pendergast (1886), 55 L. T. 767; Moody *v.* Cox & Hatt (1917), 116 L. T. 740; Ware *v.* Whitlock, [1923] 2 K. B. 418.

... .]— BOYNTON *v.* RICHARDSON, No. 71a, *post.*

66. *Add. Annotation:*—**Consd.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121.

68. *Add. Annotation:* **Mentd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

71. *Add. Annotations:* —**Apld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107. **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463.

71a. **Surveyor's certificate—Valuation of timber—Liability for negligence.**]— A firm of surveyors was appointed jointly by the parties to a contract for the sale of certain growing timber, to value the timber. The vendor subsequently commenced proceedings against the surveyors for damages for negligence in respect of their valuation of the timber:— *Held:* the surveyors were in the position of quasi-arbitrators, & the action failed.— TON *v.* RICHARDSON (1924), 69 Sol. Jo. 107.

78. *Add. Annotation:* —**Refd.** L. & N. E. Ry. *v.* Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

79. *Add. Annotations:*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. **Mentd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714.

80. *Add. Annotations:*—**Refd.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. **Mentd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623; Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 38 T. L. R. 739.

135a. ——.]—By a contract made between an Italian buyer & English sellers it was provided as follows: "Any dispute arising out of this contract to be settled by arbn. in London in the usual way." A dispute having arisen between the parties, defts. appointed M. as their arbitrator. Pltf. having failed to appoint an arbitrator after due notice given, M. made an award in favour of defts., & defts. thereupon counterclaimed to enforce the award:—*Held:* (1) the words "to be settled by arbn. in London in the usual way" meant the way in which disputes arising as to the particular commodity were settled in London, & there was ample evidence that the dispute had been settled "in the usual way"; (2) any objection to the award upon the ground of irregularity or misconduct on the part of the arbitrator could only be taken by motion to set aside or remit the award, & pltf. having failed to move within the limited time, his remedy in that respect had lapsed.—SCHIMAGLIO *v.* THORNETT & FEHR (1924), 131 L. T. 174; 40 T. L. R. 320; 68 Sol. Jo. 630; 29 Com. Cas. 175, C. A.

PART I. SECT. 3, SUB-SECT. 6.

51 ii.] Where land was expropriated for railway purposes the railway co. & the owner agreed to have the compensation determined by reference to three named persons called "valuers" in the submission, their decision was to be bi
clusive on both parties &
to appeal; they could view t
perty & call such witnesses & ta
evidence, on oath or otherwise, as they, or a majority of them, might think proper; & either party could have a representative present at the view or taking of evidence, but his failure to attend for any reason would not affect the validity of the decision: — *Held:* this agreement did not provide for a judicial arbn. but for a valuation merely. CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. Co. *v.* MASSIE (1914), 50 S. C. R. 409.—**CAN.**

m i. *Assessing loss by theft & fire—* ar-
& not a submission to bn.— SEARLE
v. ALLIANCE O., [1925] 4
D. L. R. 378 . W. R. 729.
— **CAN.**

n i. *S. P.* IRWIN *v.* CAMPBELL (1914), 32 O. L. R. 48.— **CAN.**

PART I. SECT. 4.

v i. —.] —The selection of a cannot be referred to arbn., as it is not a matter of private interest between p ies.—PALANIANDI CHETTI *v.* ARUNACHALAM CHETTI (1923), I. L. R. 47 Mad. 459.— **IND.**

xa. *Liability for & amount of alimony.*]— *Held:* proper subjects for arbn.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195; 130 W. N. 245.— **CAN.**

PART I. SECT. 6, SUB-SECT. 1.

137 ii. — — .]— Where a s
to arbn. is made subject to Arbn. Act. R.S.A., 1922 (c. 98), the
that Act must be held to
in so far as they can reasonably be applied.—MASTERS & McDOUGALL *v.* STEPHEN, STEPHEN *v.* MASTERS & McDOUGALL, [1925] 4 D. L. R. 684; [1925] 3 W. W. R. 493.— **CAN.**

PART I. SECT. 6, SUB-SECT. 3.

145 v. — — — —.]—A policy of fire insurance provided that if a claim be rejected & an action be not commenced within three months after such rejection, all benefits under the policy should be forfeited, & further any question of amount of loss should be referred to arbn., such arbn. to be a condition precedent to any action. To a claim sent in, the co. answered that they did not agree upon the amount claimed & that under the conditions of the policy they did not admit their liability:—*Held:* the right of action was that it might be decided whether such rejection was right or wrong, & it was only in the event of that question being decided against the co. that it would become necessary to ascertain the amount of the loss by arbn.—
v. DINANATH 22), I. L. R. 47 Bom. —**IND.**

• i. — — —.]—The parties in framing a contract may insert a clause binding them to refer all future disputes, either in the carrying out of the contract or in respect of a breach of it, to arbn., & one party to such a contract cannot, by averring that the other party has repudiated the contract, get rid of the arbn.

SANDERSON & SON *v.* ARMOUR & CO., LTD. (1922), 91 L. J. P. C. 167; 127 L. T. 597; [1922] S. C. (H. L.) 117; 59 Sc. L. R. 268.—**SCOT.**

e ii. — — —.]—Where there is a repudiation which goes to the substance of the whole contract, the person setting up that repudiation cannot insist on a subordinate term of the contract still being enforced.—GRAHAM *v.* PROVIDENT LIFE ASSURANCE CO., [1922] N. Z. L. R. 718.—**N.Z.**

s i. — — *Performance of contract prevented by Government.*]—A firm agreed to sell & to ship from Calcutta to Buenos Ayres bales of jute goods. The contracts contained provisions exempting the sellers from liability for late & short shipment attributable (*inter alia*) to Govt. commandeering of ships, war, "or any other unforeseen circumstances" & included provisions for the shipment of delayed
as soon as possible, subject to a
of refusal on the part of the purchasers. Each contract contained an arbn. clause in these terms: "Any dispute that may arise under this contract to be settled by arbn." Before all the bales had been shipped, the further export of jute from India to the Argentine was prohibited. A controversy having arisen between the parties as to whether, in the circumstances, the contracts had been rendered void & unenforceable *quoad* the shipment of the remainder of the bales:—*Held:* on a construction of the contracts, the controversy was a dispute arising under the contracts, & accordingly, fell to be determined by arbn.—SCOTT & SONS *v.* DEL (1923) S. C. (H. L.) 37.—**SCOT.**

s ii. —— *Contract cancelled.*]—If a contract is cancelled, an arbn. clause with such cancellation.

146. *Add. Annotations :*—**Consd.** Woodall *v.* Pearl Assce., [1919] 1 K. B. 593. **Distd.** Macaura *v.* Northern Assce., [1925] A. C. 619. **Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

147. *Add. Annotation :*—**Consd.** Macaura *v.* Northern Assce., [1925] A. C. 619.

147a. —— ——.]—In a proposal for insurance against accident the intending assured stated his occupation & signed a declaration that the answers to the questions therein were true, & that he agreed that the declaration should be the basis of the contract between him & the insurance co. whose policy, subject to the terms & conditions thereof, he agreed to accept. The policy recited the proposal & declaration "which proposal & declaration warranted to be true it is agreed shall be the basis of this contract . . . & be considered as incorporated herein, & any suppression, misrepresentation, or misstatement of fact in such written proposal & declaration shall *ipso facto* render this policy null & void"; & it provided that it was a condition precedent to the recovery of any sum under the policy that the conditions indorsed thereon should be strictly observed. Condition 8 provided that the policy might be renewed from year to year but only upon condition that nothing had happened to increase the risk, & if the risk was increased by (*inter alia*) the assured engaging in some other occupation, then "unless notice in writing of such increased risk is given to the co. . . . & any extra premium that may be required paid . . . the policy is void & no claim can be made." By condition 11, "If any question shall arise touching this policy or the liability of the co. thereunder or the extent or nature of such liability or otherwise howsoever in connection herewith then the assured & all persons claiming through the assured may refer & shall be bound, if the co. shall so require, to refer the same to arbn. by one arbitrator to be agreed on or in default of agreement by two arbitrators & their umpire under the Act of 1889 . . . & no person shall be entitled to bring or to maintain any action or proceeding on this policy except for the sum awarded under such arbn." During the currency of the policy the assured was killed by an accident. The co. denied liability on the policy on the ground that the assured either had misstated his occupation in the proposal, or, if not, had changed his occupation for one involving increased risk of which notice as required by condition 8 had not been given to the co., & contended that the policy was therefore void, & they required the dispute to be referred to arbn. under condition 11. In an action on the policy :—*Held :* (1) upon the co. requiring arbn. condition 11 made the obtaining of an award a condition precedent to a right of action; (2) the co. by relying on the terms of the policy which rendered it void in certain events did not thereby repudiate the policy as a binding contract between the parties, & were entitled to rely upon the arbn. clause as a defence to the action.—WOODALL *v.* PEARL ASSURANCE Co., [1919] 1 K. B. 593; 88 L. J. K. B. 706; 120 L. T. 556; 83 J. P. 125; 63 Sol. Jo. 352; 24 Com. Cas. 237, C. A.

Annotation :—As to (2) **Refd.** Macaura *v.* Northern [1925] A. C. 619.
Compare original volume, p. 356, No. 293.

153. *Add. Annotations :*—**Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576. **Mentd.** Croft *v.* Blay, [1919] 2 Ch. 343; Cole *v.* Kelly, [1920] 2 K. B. 106; *Re* & Batley Breweries & Bradbury's Lease, Bradbury *v.* Grimble, [1920] 2 Ch. 548.

155. *Add. Annotations : As to* (1) **Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730. *As to* (2) **Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167.

156. *Add. Annotation :* **Consd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1051.

164. *Add. Annotation :*—**Consd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

164a. ——.]—By two contracts made in 1919, applt. bought from resps. a large quantity of "American Fresh Eggs." The contracts provided that in case of any dispute as to the quality or condition of the goods, the question should be referred to arbn., provided that, "such reference shall be claimed in writing within three days after the goods have been landed." It was also provided that the award in writing of any two arbitrators should be conclusive & binding on all parties, subject to the right of appeal. The goods arrived in England, & were not examined at the port of landing, but were sold by applt. to sub purchasers. More than three days after the goods had been landed applt. wrote to resps. complaining that the goods were of inferior quality, & some time later he wrote a letter claiming a reference to arbn. Resps. did not then take the objection that the claim was out of time, but signed a submission to arbn. in respect of each contract. At the reference resps. took the points that applt.'s claim was out of time, & that the goods should have been examined at the port of landing. The arbitrators awarded "that the buyer was out of time in examining & making claim on the goods, & also in claiming arbn., & that therefore his case fails." The buyer took no steps to set aside the awards, but nearly two years later brought an action claiming damages for breach of contract :—

TOWING LINE *v.* BUNFIELD & Co. (1922), 68 D. L. R. 133.—**CAN.**

The right of one party to a contract to insist upon a term in it providing for reference to arbn. depends in the first place on the existence of a dispute.—STANDARD INSURANCE CO. *v.* SCANDRETT (1923), 23 S. R. N. S. W. 254; 40 N. S. W. W. N. 22.—**AUS.**

iv. —— ——.]—The existence of a is an essential condition for the jurisdiction of arbitrators.—UTTAM D SALIGRAM *v.* JEWA MAMOOJI, I. L. R. 46 Calc. 534.—**IND.**

153 iv. —— *Lease in dispute.*]—A lease contained a clause referring to arbn. certain specific matters & "any other questions in reference to this lease which may arise between the In arbn. proceedings t validity of a notice to quit but the whether the tenant was under the lease or under a —*Held :* as the lease in dispute, the arbn. clause in the lease did not apply.—HOTH *v.* COWAN, [1926] S. C. 58.—**SCOT.**

sb. *Clause in broker's note—Rules applicable to members only.*]—Flour was sold by defts. to pltf.
In broker's notes which contained a condition that the rules & regulations of the S. Assocn. should apply. The rules of the assocn. provided that every dispute or difference arising out of any contract or dealing should be referred to arbn. Pltf., who was not a member of the assocn., having sued defts. for damages for breach of contract :—*Held :* as the rules referring to arbn. were applicable only to disputes between members of the assocn., an application for a stay of proceed must be dismissed.—LEVIN *v.* ETC., [1921] App. D. 78.—**S. AF.**

Held: the awards were a bar to the action.—AYSCOUGH *v.* SHEED THOMSON & Co. (1924), 93 L. J. K. B. 924; 131 L. T. 610; 40 T. L. R. 707; 30 Com. Cas. 23, H. L.; *affg.* (1923), 92 L. J. K. B. 878, C. A.

Distd. Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

165a. Arbitrator to be appointed within limited time.]—A ship was chartered for a voyage from R. to H. with a full cargo of linseed. The charterparty provided for the reference of all disputes to the final arbitrament of two arbitrators, one to be appointed by each of the parties, with power to appoint an umpire, & the clause continued: "Any claim must be made in writing & claimants' arbitrator within three months of final & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." After the arrival of the ship at H. the charterers brought an action against the shipowners in respect of damage alleged to have been occasioned to a part of the linseed during the voyage by reason of the unseaworthiness of the ship at the commencement of the voyage. The shipowners pleaded that the charterers failed to appoint their arbitrator within three months of the discharge of the ship & that by reason thereof the action was not maintainable, &, by order of the ct., the question whether the claim in the action was barred by the arbn. clause was tried as a preliminary question of law:—*Held:* (1) the arbn. clause was not open to objection on the ground that it ousted the jurisdiction of the ct.; (2) inasmuch as the claim in the action was founded upon a breach of the implied condition of seaworthiness, there being in the charterparty no express provision relating to unseaworthiness, the shipowners were not entitled to the benefit of the term in the clause restricting the time within which the action could be brought, & consequently the claim was not barred by the arbn. clause.—ATLANTIC SHIPPING & TRADING Co. *v.* DREYFUS (L.) & Co., [1922] 2 A. C. 250; 91 L. J. K. B. 513; 127 L. T. 411; 38 T. L. R. 531; 66 Sol. Jo. 437; 15 Asp. M. L. C. 566; 27 Com. Cas. 311, H. L.; *varying* S. C. *sub nom.* DREYFUS & Co. *v.* ATLANTIC SHIPPING & TRADING Co. (1921), 37 T. L. R. 417, C. A.

As to (1) **Distd. & Expld.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478. *As to* (2) **Distd.** Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797; Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690. *Generally*, **Mentd.** The Christel Vinnen, [1924] P. 61.

165b. ——.]—A charterparty contained a clause providing that all disputes arising out of the contract should be referred to arbn., the claimants' arbitrator to be appointed within a time therein limited, & if he was not so] the claim was to be deemed to be : absolutely barred. Loss to cargo was suffered owing to the ship's unseaworthiness. The cargo owners claimed damages & went to arbn., but did not appoint their arbitrator within the time limited. An award was made in their favour, the shipowners not appearing:—*Held:* although the loss was caused by unseaworthiness, &, consequently, the above clause could not have been set up by the shipowners, the cargo owners were entitled in virtue of the clause to go to arbn., but only in accordance with its terms, & as they had not complied with those terms the arbitrator had no jurisdiction to make the award.—FORD (H.) & Co. *v.* COMPAGNIE FURNESS (FRANCE), [1922] 2 K. B. 797; 92 L. J. K. B. 88; 128 L. T. 286; 16 Asp. M. L. C. 102, D. C.

——.]—Pltfs. bought from defts. a quantity of East African copra cake to be of fair average quality, sound delivered. The contract provided that "the goods are not warranted free from defect rendering same unmerchantable, which would not be apparent on reasonable examination"; that any disputes arising out of the contract should be settled by arbn.; & that notice of arbn. should be given & the arbitrator nominated in writing not later than fourteen days after the final discharge of the vessel. Pltfs. resold the copra cake to B. & Co., who resold it to dealers, & they in turn resold it to farmers, who used it for feeding cattle. The cattle fed on the cake became ill, & it was then found on analysis that the cake contained an admixture of castor beans in so large a proportion as to make it poisonous. Claims were then made by the various buyers against their sellers & by pltfs. against defts. as soon as the mischief was discovered, but this was after the expiration of fourteen days from the final discharge of the vessel. Pltfs. claimed arbn., but the arbitrator before whom the matter came held that he had no jurisdiction, as notice of arbn. was not given nor the arbitrator nominated in time. In an action by pltfs. claiming damages, it was found that it was within the contemplation of the parties that the copra cake would be used for cattle food & nothing else:—*Held:* the presence of the arbn. clause was not in itself a bar to the action, nor was the award, which dealt merely with the arbitrator's jurisdiction & not with the claim.—PINNOCK BROTHERS *v.* LEWIS & PEAT, LTD., [1923] 1 K. B. 690; 92 L. J. K. B. 695; 129 L. T. 320; 39 T. L. R. 212; 67 Sol. Jo. 501; 28 Com. Cas. 210.

Annotation:—**Distd.** Ayscough *v.* Sheed Thomson (1924), 93 L. J. K. B. 924.

168. *Add. Annotation:*—**Consd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

172. *Add. Annotation:*—**Consd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

234. *Add. Citation:*—2 Hudson's B. C. 4th ed. 100.

Add. Annotations:—**Consd.** *Re* Nott & Cardiff Corpn., [1918] 2 K. B. 146. **Refd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

238a. "All loss."]—In an action in Manitoba against building contractors to recover sums improperly paid to them under a contract,

PART I. SECT. 6, SUB-SECT. 7.—A, 166 iv. ——.]—An arbitrator cannot, by an erroneous construction of the contract, give himself jurisdiction over matters not covered by it: he cannot go beyond the matters as to which the parties agreed to give him jurisdiction, nor can he deprive the ct. of the right & duty of determining the limits of the jurisdiction.—LAW *v.* CITY OF TORONTO (1920), 47 O. L. R. 231; 18 O. W. N. 59.—CAN.

PART I. SECT. 6, SUB-SECT. 7.—D.

for -A
a deed of partnership
that any difference between the partners in regard to any matter relating to the partnership affairs should be submitted to arbn. Pltf. sued deft. for damages suffered through the fraudulent acts of deft. in breach of his duty as a partner:—*Held:* such a claim fell within the terms of the arbn. clause.—WALTERS *v.* ALLISON (1922), 43 N. L. R. 238.—S. AF.

& for damages, a judgment by consent was entered whereby it was provided (*inter alia*) that pltf. should recover, among other sums, "all loss to pltf. by reason of defective workmanship & materials," & that there should be set off against the sums recovered by pltf. the fair value of the work done & materials provided at fair contractor's prices. The judgment provided further that the sums to be debited & credited were to be determined by two appraisers, & that any matter upon which they differed was to be referred to a named umpire whose decision thereon was to be final; & that the Manitoba Arbn. Act should not apply. Defts. moved to set aside or vary an award made:—*Held:* (1) under the words "all loss" there was jurisdiction to award to pltf. not only sums actually expended at the date of the award, but also a sum estimated as being necessary to make good the defects; (2) the award being within the jurisdiction conferred by the submission, & there being no error apparent on its face, it could not be questioned either on the facts or on the law.—A.-G. FOR MANITOBA *v.* KELLY, [1922] 1 A. C. 268; 91 L. J. P. C. 101: 126 L. T. 711; 38 T. L. R. 281, P. C.

Annotations:—*As to* (2) **Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; **Reld.** Hirji Mulji Cheong Yue S.S. Co., [1926] A. C. 497.

240. *Add. Annotation:*—**Reld.** *Re* Boks & Peters, Rushton, [1919] 1 K. B. 491.

254. *Add. Annotation:*—**Consd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

254a. ——.]—Unless the submission otherwise provides, the Crown is entitled, in arbn. proceedings, to rely upon the defence of the above Act.—CAYZER, IRVINE & CO. *v.* BOARD OF TRADE (1925), 95 L. J. K. B. 134; 136 L. T. 7; 42 T. L. R. 163; 70 Sol. Jo. 347; *revsd.* on other grounds (1926), 95 L. J. K. B. 1054.

255. *Add. Annotation:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

263. *Add. Annotations:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478; Hallen *v.* Spaeth, [1923] A. C. 684. **Expld.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Reld.** Woodall *v.* Pearl Assce., [1919] 1 K. B. 593; Atlantic Shipping & Trading Co. *v.* Dreyfus, [1922] 2 A. C. 250; Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054. **Mentd.** Hill *v.* South Staffordshire Ry. (1865), 12 L. T. 63.

265. *Add. Annotation:*—**Mentd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

265a. —— —— **Action on charterparty.**]—ATLANTIC SHIPPING & TRADING CO. *v.* DREYFUS (L.) & CO., No. 165a, *ante.*

278. *Add. Annotation:*—**Reld.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

288. *Add. Annotation:*—**Reld.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167.

290. *Add. Annotations:*—**Apld.** Woodall *v.* Pearl Assce., [1919] 1 K. B. 593. **Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478. **Apld.** Hallen *v.* Spaeth, [1923] A. C. 684. **Expld.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Apld.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054. **Reld.** Hill *v.* South Staffordshire Ry. (1865), 12 L. T. 63; Atlantic Shipping & Trading Co. *v.* Dreyfus, [1922] 2 A. C. 250.

300. *Add. Annotation:*—**Reld.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

301. *Add. Annotation:*—**Consd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

302. *Add. Annotation:*—*As to* (1) **Folld.** Pailin *v.* Northern Employers Mutual Indemnity Co., [1925] 2 K. B. 73.

305. *Add. Annotation:*—*As to* (2) **Consd.** *Re* Nott & Cardiff Corpn., [1918] 2 K. B. 146.

305a. Provision for fixing valuation of buildings by reference to arbitration.]—Applt. let an estate to resp. for a term of ten years, & covenanted that at the end of the term he would purchase "by valuation buildings erected by the lessee," with a reference to arbn. if the parties were unable to agree the valuation. Resp. covenanted not to transfer the demised premises without the written consent of applt.; but, in breach of that covenant, he sub-leased for the entire term, there being similar covenants in the sub-lease. At the end of the term applt. having resumed possession, resp. sued him to recover the value of buildings erected by the sub-lessee. There had been no agreement as to the amount of the valuation, & no arbn.:—*Held:* the action failed, since upon the true construction of applt.'s covenant resp. could not recover in the absence of an agreement, or an award, as to the amount of the valuation.—HALLEN *v.* SPAETH, [1923] A. C. 684; 92 L. J. P. C. 181; 129 L. T. 803, P. C.

306. *Add. Annotations:*—**Reld.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054. **Mentd.** Blackburn Bobbin Co. *v.* Allen, [1918] 1 K. B. 540.

307. *Add. Annotation:*—*Generally,* **Mentd.** Mo-

PART I. SECT. 7.

r l. ——.}—GROTHE *v.* CORPN., [1924] 4 D. L. R. 401.—**CAN.**

sc. *Waiver of right to immediate appraisal—Repossession by vendor of farm implement—Farm Implement Act, R.S.S.* 1920 (*c.* 128), *s.* 24.}—*Re* GRAY TRACTOR CO. OF CANADA & VAN TROYEN, [1925] 1 D. L. R. 718; [1925] 1 W. W. R. 513; 19 Sask. L. R. **CAN.**

PART I. SECT. 8.

283 vii. —— ——.}—An agre to refer a dispute to arbn. does not oust the jurisdiction of the ct.—BHOWANIDAS RAMGOBIND *v.* PANNACHAND LUCHMIPAT (1924), I. L. R. 52 Calc. 453.—**IND.**

PART I. SECT. 9, SUB-SECT. 1.

290 v. —— *Reference of claim under policy.*}—Conditions in an insurance policy requiring the reference of any disputed claim to arbn. & the of an award a condition to any right of action on the requiring the action to be within three months after award, are valid.—WEBB *v.* [1920] N. Z. L. R. 118.—**N.Z.**

PART I. SECT. 9, SUB-SECT. 2.

295 v. ——.}—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

sd. *Reference of disputes at port of loading—No action "elsewhere" till after arbitration.*}—*Held:* the clause prohibited the bringing of an action on such a dispute outside the province in which the port of loading was situated.—COX TOWING LINE *v.* BUNFIELD & Co. (1922), 68 D. L. R. 133.—**CAN.**

se. *Provision for fixing price of goods.*}—Pltf. agreed to sell, & deft. agreed to purchase, all fish caught by pltf. The price was to be "hereafter agreed upon, failing which the price shall be arrived at by the decision of three arbitrators." Provision was made for appointment of the arbitrators who were to "determine the price for the winter fish & the e so determined shall be paid" by eft. to pltf.:—*Held:* the fixing of the price by agreement or arbn. was a condition precedent to the right of pltf. to sue to recover the price.—VIDAL *v.* ROBINSON (WILLIAM) CO., LTD.; STEVENS *v.* (WILLIAM) CO., LTD., [1925] 1 D. L. .—**CAN.**

riarty *v.* Regents' Garage Co., [1921] 1 K. B. 423.

316a. **Petition of right.**]—(1) Where a petition of right, founded on a contract with the Crown which contains a written agreement to submit differences to arbn., has been filed in the High Ct. of Justice, proceedings in the petition may in a proper case be stayed under the Act of 1889, s. 4. (2) The granting of the King's fiat is not a step in the proceedings within that sect.

Held: (3) as the matters in dispute included an important constitutional question the proceedings in the petition ought not

OPMENT Co. *v.* R., [1920] 2 K. B. 214; L. J. K. B. 570; 122 L. T. 731; 84 J. P. 121; 14 Asp. M. L. C. 584, C. A.

Annotation: *Ad to* (1) **Reld.** Rutty-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

330. *Add.* : **Mentd.** Mortimer *v.* L. [1920] 1 Ch. 571; Prosperity *v.* Bank (19), 39 T. L. R. 372.

332. *Add. Annotation* **Mentd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry.,

338. *Add.* : **Consd.** Metrop Tunnel & Public Works *v.* L. Elec. Ry.,

339. *Add. Annotation:* **Folld.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

343. *Add. Annotations:* - **Refd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497. **Mentd.** Blackburn Bobbin Co. *v.* Allen, [1918] 1 K. B. 540.

355. *Add. Annotations:* **Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371. **Mentd.** R. *v.* Leman Street Police Station Inspector *Ex p.* Venicoff, [1920] 3 K. B. 72.

367 *Add. Annotation:* - **Consd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

372. *Add. Annotation:* *As to* (1) **Apld.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

372a. . - Pltfs. agreed with defts. to execute railway works at prices contained in schedules amounting to £359,383 0*s.* 10*d.*, & with the addition thereto of 10 per cent. for "general contingencies," amounting in the aggregate to £395,321 6*s.* 11*d.*, & there was incorporated in the contract a letter from defts. accepting pltfs.' tender for that sum. The contract provided for the payment by monthly instalments on the certificate of defts.' engineer at the rate of 90 per cent. of the value of the work actually executed, the remaining 10 per cent. to be treated as a retention fund, & further provided that any question arising between the parties in connection with the contract, or as to the construction or meaning of the contract, should be referred to the decision of an engineer to be agreed upon, or, failing agreement, to be nominated by the President for the time being of the Institute of Civil Engineers, & such submission should be deemed a submission to arbn. within the Act of 1889. An originating summons having been taken out by pltfs. for the determination of the question whether upon the true construction of the contract, for the purpose of the monthly payments to be made to pltfs. thereunder, the value of the work executed was to be ascertained by adding to the prices contained in the schedules a proportionate amount of the sum therein provided for "general contingencies," defts. moved for a stay of proceedings under the summons:—*Held:* there was a clear & definite contract between the parties that the matter in dispute should be referred to an arbitrator as being a person who possessed the necessary technical knowledge for dealing with the subject-matter of the contract; if the ct. allowed the action to proceed evidence would be necessary in order to put the ct. in a position to determine the technical meaning of the expression "general contingencies" & a number of other expressions used in the contract; the meaning of those expressions in an engineering contract would be perfectly familiar & would present no difficulty to the engineer to whom the parties had agreed to refer the decision of their disputes; the case was not one which involved a simple question of law, & pltfs. had not discharged the *onus* of showing that the dispute was one which ought not to be referred to arbn., & the arbn. ought to proceed. - METROPOLITAN TUNNEL & PUBLIC WORKS *v.* LONDON ELECTRIC RY. CO., [1926] Ch. 371: 95 L. J. Ch. 246; 135 L. T. 35, C. A.

PART I. SECT. 10, SUB-SECT. 3. C.

cl. - .] A clause in a policy of whereby the parties ed that, if any as to the amoun of loss, if sh submitted to arb , but which did provide that the lon of insurer's liability ed until the loss been not to for an by the on the

W. W. 1. I: CAN.

sf.

er to Sect. 6 of the alo e Act to take advantage of an to refer disputes to arbn. by an application to stay proceedings in the action. A clause in an agreement profor the reference of any may arise to the defs ct. is a submission within s. 6.— *v.* NATIONAL LIFE ASSURANCE CO. OF CANADA, [1918] 3 W. W. R. 858.—CAN.

PART I. SECT. 10, SUB-SECT. 5.

339 iii. - —.]—When the ct. has been apprised that a suit has been instituted in contravention of an arbn. agreement, the ct. has a discretion to stay the suit. The burden lies on pltf. to show that some sufficient reason exists why the matter should not be referred to arbn.—DINABANDHU JANA *v.* DURGAPRASAD JANA (1919), I. L. R. 46 Calc. 1011.—**IND.**

PART I. SECT. 10, SUB-SECT. 6.—C.

361 i. *Surveyor of one party.*]—A contract provided that every dispute which might arise between the parties the construction of the contract, or as to the rights or liabilities of either party thereunder, should be referred to defts.' surveyor, whose should be final:—*Held:* if would come before him for decision in which he would be a necessary witness defts.' surveyor would be disqualified from acting as arbitrator, but as, in the circumstances, he would not be a necessary witness, he was not although he had already expressed an opinion in favour of defts.—HOOG *v.* BELFAST CORPN., [1919] 2 I. R. 305.—**IR.**

363 ii. ——.]—When a personal interest which may conflict with duty exists, an arbitrator is disqualified; & the inference necessary to disqualify is more easily drawn by reason of the relationship between the arbitrator & one of the contracting parties.—LAW *v.* CITY OF TORONTO (1920), 47 O. L. R. 251; 18 O. W. N. 58.—**CAN.**

PART I. SECT. 10, SUB-SECT. 6.—D.

369 i. *Only question one of law.*]—question should be determined in the course of the action itself.—GRAHAM *v.* PROVIDENT LIFE ASSURANCE CO., [1922] N. Z. L. R. 718.—**N.Z.**

374 iii. ——.]—An important question of law being involved, the ct. in the exercise of its discretion, refused to stay the action.—RICHARDSON *v.* ARMY, NAVY & GENERAL ASSURANCE LTD., [1924] 2 I. R. 96.—**IR.**

374 iv. ——.]—ANGLO-PERSIAN OIL

379a. Matters in dispute including important constitutional question.] — ANGLO-NEWFOUNDLAND DEVELOPMENT Co. *v.* R., No. 316a, *ante*.

380. *Add. Annotation :*—**Consd.** Smith *v.* Martin, [1925] 1 K. B. 745.

383. *Add. Annotation :*—*As to* (1) **Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

391. *Add. Annotation :*—**Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

394. *Add. Annotation :*—**Mentd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

400. *Add. Annotation :*—**Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

402a. Summons for discovery.]—A party to a written contract containing an agreement to refer disputes to arbn. was sued for breach of the contract. He was unaware that the contract contained an agreement to refer. Pltfs. in the action took out a summons for discovery. Deft. asked for discovery also, & an order for mutual discovery was made. He then became aware of the agreement to refer & applied for a stay of proceedings in the action :—*Held :* he had taken a step in the proceedings within the Act of 1889, s. 4, & therefore was not entitled to a stay.—PARKER, GAINES & Co. *v.* TURPIN, [1918] 1 K. B. 358 ; 87 L. J. K. B. 357 ; 118 L. T. 346 ; 62 Sol. Jo. 331, D. C.

408a. Granting of fiat—Petition of right.]—ANGLO-NEWFOUNDLAND DEVELOPMENT Co. *v.* R., No. 316a, *ante*.

410. *Add. Annotation :*—**Mentd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

413. *Add. Annotation :*—**Mentd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

419. *Add. Annotations :*—**Mentd.** Hogarth Shipping Co. *v.* Blyth, Greene, Jourdain, [1917] 2 K. B. 531 ; North Shipping Co. *v.* Rank (1926), 43 T. L. R. 82.

420. *Add. Annotation :*—**Mentd.** Blackburn Bobbin Co. *v.* Allen, [1918] 1 K. B. 540.

442. *Add. Annotation :*—**Mentd.** Samuel *v.* Dumas, [1924] A. C. 431.

503. *Add. Annotation :*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

521. *Add. Annotations :*—**Mentd.** Hogarth Shipping Co. *v.* Blyth, Greene, Jourdain, [1917] 2 K. B. 534 ; North Shipping Co. *v.* Rank (1926), 43 T. L. R. 82.

565. After this case, following "*D. By Lunacy.—See* case *infra*," add as follows :—

E. Other Cases.

565a. Frustration of adventure - Charterparty containing arbitration clause.] Resps. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The charterparty contained a clause by which all disputes arising out of the contract were submitted to arbn. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her. An arbitrator awarded resps. damages for breach of contract, & they brought an action upon the award :- *Held :* there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract, including the submission to arbn., & the contract being executory the arbitrator had not jurisdiction. HIRJI MULJI *v.* CHEONG YUE S.S. Co., [1926] A. C. 497 ; 95 L. J. P. C. 121 ; 134 L. T. 737 ; 42 T. L. R. 359 ; 31 Com. Cas. 199 ; 17 Asp. M. L. C. 8, P. C.

CO., LTD. (MADRAS) *v.* PANCHAPAKESA AIYAR (1923), I. L. R. 47 Mad. 161.—**IND.**

sk. *Fundamental questions of law.*]—On motion by defts. to stay the proceedings, & to refer the matters in dispute to defts.' surveyor :—*Held :* fundamental questions of law were involved which should be tried in an action. Motion refused.—HOGG *v.* BELFAST CORPN., [1919] 2 I. R. 305.—**IR.**

PART I. SECT. 10, SUB-SECT. 6.—E.

376 vi. ——.]—In an action for specific performance of a contract, deft. applied for stay of under an arbn. clause :—*Held :* the to the making of the contract was not within the arbn. clause, & stay refused.—MCINTOSH *v.* LAYFIELD, [1919] 1 W. W. R. 590.—**CAN.**

376 vii. ——.]—On a motion by defts. to stay proceedings & to refer the matters in dispute to arbn. :—*Held :* the matters in dispute were outside the arbn. clause, & motion refused.—HOGG *v.* BELFAST [1919] 2 I. R. 305.—**IR.**

cts. should be reluctant to permit an appeal to them by one of the parties to an agreement to refer questions that may arise them to a domestic forum rather than the ordinary cts., when the agreement is couched in wide terms.—STOKES-STEPHENS OIL Co. *v.* MCNAUGHT, [1918] 2 W. W. R. 124.—**CAN.**

PART I. SECT. 10, SUB-SECT. 7.

si. *After appearance.*]—An application must be made after appearance, & where appearance is not requisite the application may be made at any time before taking any other step in the proceedings.—HARRISON, ETC. *v.* CRESPIN, [1921] V. L. R. 643.—**AUS.**

e i. .]—The application for stay is too late if made after delivery of the defence.—BRAND *v.* LIFE ASSURANCE CO. OF CANADA, [1918] 3 W. W. R. 858.—**CAN.**

f i. ——.]—An application for stay of proceedings before deft. has filed his written statement or taken any other step in the suit does not constitute taking a step in the proceedings within Arbn. Act, s. 19, so as to operate as a bar.—JOYLALL & Co. *v.* GOPIKAM BHOTIKA (1920), I. L. R. 47 Calc. 611.—**IND.**

396 i. *Security for costs.*]—Defts. were held to be precluded from for an order staying proceedings in an action, by having previously issued & served an order for security for c & SONS *v.*

38, LTD., [1920] 46 O. L. R. 285.—**CAN.**

398 i. *Summons for directions.*]—If a party on a summons for directions takes objection, this is a "step in the action" & prevents him applying for a stay of the action, although he may say at the time he intends to apply for a stay.—BUCKLEY *v.* QUEEN INSURANCE Co., [1923] 3 D. L. R. 163.—**CAN.**

PART I. SECT. 12, SUB-SECT. 2.

441 i. *Powers & duty of court.*]—An arbn. as to the value of property became abortive because of the failure of the persons appointed to act as arbitrators to agree.—*Held :* it was the duty of the ct. in working out a contract which provided for such arbn. to receive evidence of such value & to decide the question.—CALGARY CITY *v.* BLOW, [1925] 3 D. L. R. 1165, [1925] 3 W. W. R. 225.—**CAN.**

PART I. SECT. 13, SUB-SECT. 1.—B.

494 ii. ——*Submission by Crown in right of Dominion.*] Ontario Arbn. Act, s. 5, making a submission to arbn. irrevocable except by leave of the ct., does not apply to a submission by the Crown in right of the Dominion.—R. (1916), 56 S. C. 176, L. R. 353.—**CAN.**

Part II.—The Arbitrators and Umpire.

627. After this case insert, "*See, now*, Administration of Justice Act, 1920 (c. 81), s. 16."

629. *Add. Annotation :—As to* (3) **Distd.** *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

629a. —— **Discretion of court to refuse to appoint except upon terms.**]—On an application under the Act of 1889, s. 5, to appoint an arbitrator the ct. has a discretion & may in a proper case refuse to make an appointment except upon terms.

A contract between British shipbuilders & foreign shipowners for the building & purchase of certain ships contained a clause referring disputes & differences to the decision of a single arbitrator in accordance with the Arbn. Act. Disputes having arisen the foreign firm duly gave notice to the British shipbuilders to appoint an arbitrator, &, on their refusal to do so, applied to the ct. under sect. 5 of the Act to appoint an arbitrator :—*Held :* in the case of an application for arbn. by a foreigner residing out of the jurisdiction the ct. had an absolute discretion in assenting to or refusing the application, & in the former case the ct. could attach any reasonable condition, such as making an order for security for the costs of the proceedings, to the granting of the application.—*Re* BJORNSTAD & OUSE SHIPPING CO., [1924] 2 K. B. 673 ; *sub nom.* BJORNSTAD *v.* OUSE SHIPPING CO., 93 L. J. K. B. 977 ; 131 L. T. 663 ; 40 T. L. R. 636 ; 68 Sol. Jo. 754 ; 30 Com. Cas. 14, C. A.

630. *Add. Annotation :* **Folld.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121.

630a. — ——.]—A contract for the sale of goods was entered into between B., the seller, & R., who, so far as appeared from the contract, were the buyers. The contract contained an arbn. clause. The goods delivered in pursuance of the contract were despatched to a foreign firm, who complained of their quality. Thereupon the foreign firm & R., who said they had merely acted as agents for that firm, claimed to have the dispute as to the quality of the goods submitted to arbn. B., while willing to go to arbn. as between himself & R., refused to assent to an arbn. to which the foreign firm were parties, maintaining that he had sold to R. as principals. R. & the foreign firm then took out a summons for the appointment of an arbitrator pursuant to the Act of 1889, s. 5 :—*Held :* it being in dispute whether there was a submission between B. on the one hand & R. & the foreign firm on the other, there was no "matter" pending in the High Ct. as between those parties ; therefore an appeal from an order for the appointment of an arbitrator was not in a matter of practice & procedure within R. S. C. Ord. 54, r. 23, &, consequently, it lay not to the Ct. of Appeal, but to the Div. Ct.—& BRADLEY & CO. *v.* BERN- [1925] 2 K. B. 121 ; 94 L. J. K. B. 691 ; 133 L. T. 234, D. C.

633. *Add. Annotation :*—**Mentd.** Dibble *v.* Wilts & Somerset Farmers, [1923] 1 Ch. 342.

639. *Add. Annotations :* —**Mentd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

686. *Add. Annotation :*—**Mentd.** Samuel *v.* Dumas, [1924] A. C. 431.

704. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

791. *Add. Annotation :*—**Refd.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

794. *Add. Annotations :—As to* (1) **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463. *As to* (2) **Folld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

Part III.—The Hearing.

816a. — — **Act of 1889, s. 2, Sched. I. (f)—Against Crown—"Subject to any legal objection."**]—(1) In an arbn. for the determination of ...ites under a contract between the ... acting.]—A party to an arbn. has power to appoint another arbitrator in place of a first who has rendered himself ... of acting—*Re* WEILER & CITY OF VICTORIA CORPN. (1917), 24 B. C. R. 148.—**CAN.**

Shipping Controller on behalf of His Majesty & another party, the arbitrators or umpire have no jurisdiction under Sched. 1 (*f*), incorporated in sect. 2 of the above Act, or ... of America—*Arbitration Act*, 1909.]—Where an arbitrator had removed his ... to Buffalo, N.Y., & was not ... to return :—*Held :* the ap... t of a new arbitrator was ... as the first was "incapable of acting" within s. 7 of the above Act. —*Re* MCNAUGHT & STOKES-STEPHENS OIL CO., [1918] 3 W. W. R. 337 ; 43 D. L. R. 7.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—A.

n. Add as follows :—*Revsd. sub nom.* ... RY. & COAL CO. *v.* MCISAAC ..., 37 S. C. R. 134.

PART II. SECT. 1, SUB-SECT. 2.—B.

y ii. —— ——.]—A motion to appoint an arbitrator under s. 5 of the above Act on the refusal of the municipality to appoint its arbitrator, refused on the ground of lack of jurisdiction.—GOLD *v.* SOUTH VANCOUVER, [1918] 3 W. W. R. 585.—**CAN.**

, also, Vol. II., p. 409, case n.

PART II. SECT. 1, SUB-SECT. 4.

OF HURON *v.*]
6 O. L. R. 101.—**CAN.**

PART II. SECT. 1, SUB-SECT. 5.

sm. *Original nominee incapable of ...*

PART II. SECT. 1, SUB-SECT. 6.—C.

Act.]— ... *v.* CITY OF VAN- ... L. R. 747
B. C. R. 382 ; [1922] 1 W. W. R. 779.—**CAN.**

...408) ii. —— ——.
]—A Supreme Ct. Judge in appoint- ... an arbitrator is acting as *designata*, & has no jurisdiction ... s. 133 (9) of the above Act to ... costs.—MATTE *v.* VANCOUVER (CITY), [1917] 2 W. W. R. 53.—**CAN.**

sn. ... *of*

PART II. SECT. 5, SUB-SECT. 4.

sp. *Action for return of excess paid —Payment by one cheque to arbitrators jointly—Form of judgment.*]—The judgment should be against each deft. for the sum received by him in excess of the amount to which he was entitled.—CANADIAN NORTHERN RY. CO. *v.* OTTLEY, [1918] 2 W. W. R. 1005 ; 11 Sask. L. R. 282 ; 42 D. L. R. 772.—**CAN.**

otherwise, to require the Shipping Controller to make discovery of the documents in his possession or power relating to the matters in question. (2) In Sched. 1 (*f*), incorporated in sect. 2 of the above Act, the words "subject to any legal objection" apply to all the subsequent provisions of the clause, including not only the provision that the parties shall produce before the arbitrators or umpire all books, etc., within their possession or power, but also the provision that the parties shall "do all other things which . . . the arbitrators or umpire may require."—*Re* SOCIÉTÉ LES AFFRÉTEURS RÉUNIS & SHIPPING CONTROLLER, [1921] 3 K. B. 1; *sub nom.* SOCIÉTÉ LES AFFRÉTEURS RÉUNIS *v.* SHIPPING CONTROLLER, 90 L. J. K. B. 812; 124 L. T. 727; 37 T. L. R. 460, D. C.

Annotation :—As to (2) **Refd.** Kursell *v* Timber Operators & Contractors, [1923] 2 K. B. 202.

Discovery against the Crown generally, *see* DISCOVERY, Vol. XVIII., p. 60.

817. *Add. Annotations :*—**Consd.** *Re* Soc. Les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202. **Mentd.** Light *v.* West, [1926] 2 K. B. 238.

817a. —— Power of arbitrator to order — Reference by consent out of court.]—In a reference by consent out of ct. under the Act of 1889, the arbitrator has jurisdiction to order either party to make discovery of documents or to answer interrogatories on oath, by virtue of Sched. 1 (*f*) of the Act.—KURSELL *v.* TIMBER OPERATORS & CONTRACTORS, LTD., [1923] 2 K. B. 202; 92 L. J. K. B. 607; 129 L. T. 21; 87 J. P. 79; 39 T. L. R. 419; 67 Sol. Jo. 557; 28 Com. Cas. 376, D. C.

830. *Add. Annotation :*—**Refd.** Ricketts *v.* Gurney (1819), 7 Price, 699.

830a. —— ——.]—On an application to the Ct. of Exch. on the same facts as set out in No. 830:—*Held :* the party was privileged during the journey, including his stay at Clifton, on the ground of the deviation being for a necessary purpose, & the delay no more than reasonable for the accomplishment of it.—RICKETTS *v.* GURNEY (1819), 7 Price, 699; 1 Chit. 682; 146 E. R. 1106.

Annotations :—**Refd.** Spencer *v.* Newton (1837), 1 Nev. & P. K. B. 818. **Mentd.** Selby *v.* Hills (1832), 1 Moo. & S. 253.

835. *Add. Annotations :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

836. *Add. Annotation :*—**Consd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

840. *Add. Annotation :*—**Refd.** R. *v.* Sullivan, [1923] 1 K. B. 47.

841a. Whether entitled to act as advocate for party appointing him.]—An arbitrator appointed to act for one of the parties to a commercial dispute is not justified in taking up the position of an advocate for the party appointing him, but should act impartially.—ROFF *v.* BRITISH & FRENCH CHEMICAL MANUFACTURING CO. & GIBSON, [1918] 2 K. B. 677; 87 L. J. K. B. 996; 119 L. T. 436; 34 T. L. R. 485; 62 Sol. Jo. 620, C. A.

841b. ——.]—FRENCH GOVERNMENT *v.* TSURUSHIMA MARU (OWNERS), No. 1022a, *post*.

862. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

874. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 681.

888a. —— —— Agreement to dispense with notice.]—FRENCH GOVERNMENT *v.* TSURUSHIMA MARU (OWNERS), No. 1022a, *post*.

906. *Add. Annotations :*—*As to* (1) **Apprvd. & Folld.** Oppenheim *v.* Mahomed Haneef, [1922] 1 A. C. 482. **Refd.** Serimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174. *As to* (2) **Apprvd. & Folld.** Oppenheim *v.* Mahomed Haneef, [1922] 1 A. C. 482. **Refd.** Serimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174.

939. *Add. Annotation :* **Refd.** Royal Commission on Sugar Supply *v.* Soc. (1922), 38 T. L. R. 681.

941. *Add. Annotation :* **Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Soc. (1922), 38 T. L. R. 681.

943. *Add. Annotation :* **Refd.** Royal on Sugar Supply *v.* Kwik-Hoo-Tong Soc. (1922), 38 T. L. R. 684.

949a. ——.]—An arbitrator appointed under Agricultural Holdings Act, 1908 (c. 28), for the purpose of determining claims & compensation payable in respect of (*inter alia*) certain fixtures, hay & straw left by the tenant on his farms, & hay & straw removed by him after the determination of the tenancy, held two sittings & then gave notice that he had been waiting to be supplied with information as to the hay & straw sold off & warned the parties that if it was not supplied promptly he would have to hold another sitting. After an interval of less than a fortnight he gave further notice that he would go to the farms on a specified date "to value the hay & straw & to receive an account of the hay & straw removed." The tenant not having such an account ready & thinking that the only to be dealt with was a valuation of the stacks of hay & straw remaining on the farm did not attend by

PART III. SECT. 2, SUB-SECT. 4.

883 iii. —— ——.]—There is no statutory rule that if an arbitrator proceeds *ex parte* without giving notice of his intention to proceed in that manner, the award made by him must be set aside.—UDAICHAND PANNA LALL *v.* DEBIBUX JEWANRAM (1920), I. L. R. 47 Calc. 951.—**IND.**

PART III. SECT. 2, SUB-SECT. 8.—A.

g i. —— ——.]—An arbitrator cannot decide the case submitted to him on his own knowledge & without taking evidence, unless the terms of the reference especially permit him to do so.—LACHMI NARAIN *v.* SHEONATH PONDE (1919), I. L. R. 42 All. 185.—**IND.**

—— ——.]—In an agricultural when the submitted was a matter depe upon opinion:—*Held :* the himself a farmer & skilled valuer, was able to form a just & conscientious opinion without the necessity of

(1919), 56 Sc. L. R. 305; [1919] L. T. 260.—**SCOT.**

PART III. SECT. 2, SUB-SECT. 8.—B.

938 v. ——.]—An award was set aside for the taking of evidence by the arbitrator in the absence of the other arbitrators & of one of the parties.—SNIDER & MILLER'S ARBITRATION, 4 D. L. R. 313; 3 W. W. R.

938 vi. —— One of the parties to an arbn. so reduction of the arbiter's award on the ground that the arbiter had examined witnesses without that party being present or

arbiter had decided the question in that party's favour, he had suffere no injustice, & reduction refused.—BLACK *v.* WILLIAMS & CO. (WISHAW LTD., [1924] S. C. (H. L.) 22.—**SCOT.**

938 vii. ——.]—An arbitrator heard from one party in the onent, & also took in the absence of both parties. The award was consequently set aside by the ct.—BURNS *v.* N. L. R. 461.—**S. AF.**

If or his representative, but his foreman was present to point out & give information about the stacks on the farms. While there the arbitrator, besides valuing the stacks, questioned the foreman as to the hay & straw removed. Immediately afterwards he closed the hearing & made an award in which he dealt with the claim for hay & straw removed on the basis of the foreman's evidence, which had not been tendered by either party, & was taken in the presence only of the landlord's representative. He did not deal with the question of the fixtures, but purported to reserve power to deal with them, if required: *Held:* the award must be set aside as the arbitrator had been guilty of legal misconduct in taking evidence in the absence of, & without previous notice to, the tenant.—*Re* O'CONOR & WHITLAW'S ARBITRATION (1919), 88 L. J. K. B. 1242, C. A.

949b. ——.] In an arbn. between sellers & buyer arising out of the rejection by the latter of certain goods which he alleged did not correspond to the contract description, the arbitrators heard the evidence of each of the parties in the absence of the other. No objection was made at the time to this procedure. An award having been made in favour of the sellers, the buyer moved to set it aside: *Held:* the award must be set aside, as the arbitrators had acted improperly in hearing the evidence on behalf of one party in the absence of the other.—RAMSDEN (W.) & Co. *v.* JACOBS, [1922] 1 K. B. 610; 91 L. J. K. B. 432; 126 L. T. 409; 26 Com. Cas. 287, D. C.

949c. **Evidence immaterial.**]—It is misconduct which may justify the setting aside of an award if the arbitrators hear evidence in the absence of the parties, even though the evidence so received is immaterial. It makes no difference that the arbitrators could not properly have made any other award than that which they did make, & it is quite immaterial whether the evidence wrongly admitted helped the arbitrators to a right conclusion or a wrong conclusion, & the ct. cannot inquire to what extent their minds were affected by such evidence.—ROYAL COMMISSION ON SUGAR SUPPLY *v.* KWIK-HOO-TONG TRADING SOCIETY (1922), 38 T. L. R. 681, D. C.; *subsequent proceedings, sub nom.* KWIK-HOO-TONG TRADING SOCIETY *v.* ROYAL COMMISSION ON SUGAR SUPPLY (1923), 129 L. T. 500.

952. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 681.

955. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 681.

956. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 681.

960. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

964. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

969. *Add. Annotation:*—**Folld.** Caven *v.* Canadian Ry. (1925), 133 L. T. 774.

1000. *Add. Annotation:*—**Refd.** Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

1022a. —— —— ——.]—In commercial arbns. the practice is that, unless the parties give notice that they desire to attend personally or by their solr. or counsel, the arbitrators present the evidence & arguments to the umpire & have full power to act as advocates. In an arbn. on a charterparty the umpire without hearing the parties made his award on the case as presented by the arbitrators. On a motion to set aside the award on the ground of misconduct by the umpire:—*Held:* there was no evidence of misconduct by the umpire, & the motion failed.

In arbn. proceedings *primâ facie* the common law rule applies that the parties should have notice of the proceedings so that they could attend them, if desirous of so doing, & the only way in which the rule can be departed from is by agreement, & the ct. would give effect to their agreement (ATKIN, L.J.).—FRENCH GOVERNMENT *v.* TSURUSHIMA MARU (OWNERS) (1921), 37 T. L. R. 961, C. A.

n:—**Refd.** Bourgeois *v.* Weddell, [1924] 1 K. B.

1023a. Right to call arbitrator as witness.]—A dispute arose between the buyer & sellers of a quantity of meat as to its quality. The buyer sent K. to inspect & report upon the meat. The dispute having been referred to arbn., the buyer appointed K. as his arbitrator. The arbitrators having failed to agree upon their award the matter was referred to an umpire, & the buyer then proposed to call K. as a witness before the umpire to prove the state of the meat. The sellers objected to the competency of K. as a witness on the general principle that an arbitrator was disqualified from giving evidence in the arbn. proceedings:—*Held:* as it was a commercial arbn. K. was not disqualified from giving evidence before the umpire, notwithstanding that he had acted as arbitrator.—BOURGEOIS *v.* WEDDELL & Co., [1924] 1 K. B. 539; 93 L. J. K. B. 232; 130 L. T. 635; 40 T. L. R. 261; 68 Sol. Jo. 421; 29 Com. Cas. 152; 88 J. P. Jo. 25, D. C.

1034. *Add. Annotation:*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

1035. *Add. Annotation:*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1036. *Add. Annotation:*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1036a. —— —— ——.]—A contract for the sale of sugar provided that the contract was

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959 v. ——.]—An award was set because, in considering the same the hearing, an arbitrator, in the out notice to the & got information from one who had been a witness on the hearing.—*Re* YUKON GOLD CO. W. W. R. 760, D. L. R. 239.—**CAN.**

vi. ——.]—Where the arbitrator had taken evidence in the absence of both parties:—*Held:* the award should be set aside.—BURNS *v.* BURNE (1922), 43 N. L. R. 461.—**S. AF.**

PART III. SECT. 3, SUB-SECT. 1.

1034 v. —— *Arbitration Act, R. S. O.*, 1914 (*c.* 65).]—A case may be stated by the arbitrators under s. 29 of the above Act.—*Re* TORONTO GENERAL TRUSTS CORPN. & MCCONKEY (1918), 41 O. L. R. 314; 13 O. W. N. 281.—**CAN.**

m l. ——.]—A case stated by arbitrators, under Arbn. Act, R. S. O., 1914 (c. 65), s. 22, for the determination of the ct., is now to be heard by a judge in the Weekly Ct.—*Re* MCCONKEY'S ARBITRATION (1918), 42 O. L. R. 380; 140 W. N. 31; 43 D. L. R. 732.—**CAN.**

subject to the rules of the Refined Sugar Assocn. The rules required that all members of the assocn. making contracts subject to those rules should refer any disputes arising out of such contracts, including any questions of law, to the arbn. of the council of the assocn.; & by r. 19: "Neither buyer, seller, trustee in bkpcy., nor any other person as aforesaid shall require, nor shall they apply to the ct. to require, any arbitrators to state in the form of a special case for the opinion of the ct. any question of law arising in the reference, but such question of law shall be determined in the arbn. in manner herein directed." A dispute between the buyers & sellers was referred to the arbn. of the council. The buyers requested the arbitrators either to state their award in the form of a special case under the Act of 1889, s. 7, or alternatively to state a case for the opinion of the ct. under sect. 19 upon certain points of law arising in the reference, or to give them an opportunity of applying to the ct. for an order directing them to state a case. The arbitrators, thinking themselves precluded by r. 19, refused to comply with that request, & made their award without giving the buyers an opportunity of applying to the ct. for an order. The buyers move to set aside the award on the ground of misconduct of the arbitrators in so refusing:—*Held:* r. 19 & the agreement embodying it were contrary to public policy & invalid, as involving an ouster of the statutory jurisdiction of the cts. under the Arbn. Act, & the award must be set aside.—CZARNIKOW *v.* ROTH, SCHMIDT & Co., [1922] 2 K. B. 478; 92 L. J. K. B. 81; 127 L. T. 824; 38 T. L. R. 797; 28 Com. Cas. 29, C. A.

1037. *Add. Annotations:*—**Refd.** Buerger *v.* Barnett (1919), 89 L. J. K. B. 161; Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1039. *Add. Annotations:*—**Mentd.** Cornelius *v.* Phillips, [1918] A. C. 199; Anderson *v.* Daniel, [1924] 1 K. B. 138.

1039a. —— Well-defined question of law must be formulated.]—An arbitrator should not state a special case except upon some well-defined questions of law & should insist that the party asking him to state a case should formulate the questions upon which he desires it to be stated. It is improper for an arbitrator to state a case merely asking generally for the opinion of the ct. on any questions of law involved.—WILLIAMS *v.* MANISSALIAN FRÈRES (1923), 29 Com. Cas. 42, C. A.

1043. *Add. Annotation:*—**Mentd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

1047. *Add. Annotation:*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1049. *Add. Citation:*—*On appeal*, [1914] 1 Ch. 300, C. A.

Add. Annotation:—**Mentd.** R. *v.* Bedfordshire County Council, *Ex p.* Sear, [1920] 2 K. B. 465.

1051a. —— Application to stay proceedings—Until security for costs given.]—The Govt. of an independent State made with a co. a contract containing an arbn. clause. An arbn. took place & was divided into two parts, the first being as to whether the Govt. had committed a breach of contract. The result of this part of the arbn. was that an award was given in favour of the co. & the Govt. was ordered to pay costs. The second part of the arbn. as to the amount of damage then began, & when the evidence had been closed the Govt. asked the arbitrator to state an advisory case for the opinion of the ct., but the arbitrator refused to do so. The Govt. then issued a summons asking that the arbitrator might be ordered to state a case, & thereupon the co., applied that all further proceedings might be stayed until the Govt. (1) had paid the costs which it had been ordered to pay, & (2) had given security to answer the costs of the matter & of the arbn.:—*Held:* so far as concerned the summons for a case to be stated the Govt. was in the position of a pltf., & it could not rely on its foreign sovereignty, & being out of the jurisdiction must give security for the costs of the summons, but the rest of the co.'s application must stand over to be dealt with on the hearing of the summons.—DUFF DEVELOPMENT CO., LTD. *v.* KELANTAN GOVERNMENT ... T. L. R. 375; *nom. Re* DUFF DEVELOPMENT CO., LTD. & KELANTAN GOVERNMENT, 69 S. Jo. 191.

1053. *Add. Annotations:* **Consd.** Duff Development Co. *v.* Kelantan Government (1925), 41 T. L. R. 375. **Mentd.** Manbre Saccharine Co. *v.* Corn Products Co., [1919] 1 K. B. 198; Cogstad *v.* Newsum, [1921] 2 A. C. 528.

1054. *Add. Annotation:* **Refd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

1055. *Add. Annotations:* *As to* (1) **Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. *As to* (2) **Refd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

1056. *Add. Annotations:* **Refd.** Manbre Saccharine Co. *v.* Corn Products Co., [1919] 1 K. B. 198; Cogstad *v.* Newsum, [1921] 2 A. C. 528; Duff Development Co. *v.* Kelantan Government (1925), 41 T. L. R. 375.

1057. *Add. Annotations:* **Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1058a. - - - - - - - - - - .] A special case stated by an arbitrator for the opinion of the ct. is stated under the Act of 1889, s. 19, or s. 7, according as the arbitrator does or does not retain jurisdiction in the reference. If he retains jurisdiction the case is stated under sect. 19, & no appeal lies to the Ct. of Appeal from the decision of the High Ct. upon the special case; but if he makes his award finally, & retains no further jurisdiction in the reference, the case is stated under sect. 7 & an appeal lies from the decision of the ct.

By a submission contained in a charterparty disputes were referred to two arbitrators &, if they could not agree, to an umpire. The umpire stated for the opinion of the High Ct. a special case in which he set out the facts, decided that there had been a breach of the charterparty, & assessed damages for the breach. The award concluded with these words: "The question for the opinion of the ct. is whether upon the true construction of the charterparty & the facts stated by me the decisions at which I have arrived are correct in law. If they be correct my award is to stand, but if incorrect in any particulars I desire that the award may be referred back to me for reassessment of the damages due in accordance with the decision of the ct.":—*Held:* this was not a final award; the case was, therefore, stated under

sect. 19 & no appeal lay to the Ct. of Appeal. —COGSTAD (C. T.) & Co. *v.* NEWSUM (H.), SONS & Co., [1921] 2 A. C. 528 90 L. J. K. B. 1293; 85 J. P. 253; 37 T. L. R. 995; 19 L. G. R. 581; 27 Com. Cas. 11; *sub nom. Re* COGSTAD (C. T.) & Co. & NEWSUM (H.), SONS & Co., LTD., 126 L. T. 65; 15 Asp. M. L. C. 369, H. L.; *affg.* S. C. *sub nom. Re* COGSTAD & Co. & NEWSUM, SONS & Co., [1921] 1 K. B. 87, C. A.; *previous proceedings, sub nom.* LORD (OWNERS) *v.* NEWSUM, SONS & Co., LTD., [1920] 1 K. B. 846.

Expld. & Distd. Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1059. *Add. Annotations:*—**Consd.** *Re* Wulff & Dreyfus (1917), 117 L. T. 583; *Re* Cogstad & Newsum, [1921] 1 K. B. 87; A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395. **Refd.** *Re* Olympia Oil & Cake Co. & MacAndrew Moreland, [1918] 2 K. B. 771; *Re* Parsons & Brixham Smack Insce. Soc. (1918), 62 Sol. Jo. 381 Westacott *v.* Hahn, [1918] 1 K. B. 495 Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. **Mentd.** Hill *v.* Showell (1918), 87 L. J. K. B. 1106; Payzu *v.* Saunders, [1919] 2 K. B. 581.

1062. *Add. Annotation:*—**Mentd.** Harnett *v.* Bond, [1924] 2 K. B. 517.

1067. *Add. Annotations:*—*As to* (1) **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45. *Generally,* **Mentd.** Metropolitan Water Board *v.* Kingston Union Assmt. Com., [1925] 2 K. B. 509.

1067a. Finality—Request to court to vary if award wrong in law.]—Disputes which had arisen under a charterparty were referred to arbn. & the arbitrator made his award in the form of a special case in which, after setting out the facts, & holding that the owners had committed a breach of the charterparty, he made an award in favour of the charterers & the damages & costs payable by the to the charterers. The case proceeded as follows: "The question for the opinion of the ct. is whether upon the facts as stated by me my award is right in law. If my award be correct then it shall stand; but should the ct. find that it be wrong in law then I request that the ct. shall vary my award as in their discretion they may think fit, both as to the damages & as to the costs . . . except that if the ct. shall only vary my award on the subject of the amount of the damages, my discretion as to the costs of the reference & the costs of my award shall stand":—*Held:* the award was a complete & final award under sect. 7 of the Act of 1889.—LARRINAGA & Co. *v.* SOCIETE FRANCO-AMERICAINE DES PHOSPHATES DE MEDULLA (1922), 92 L. J. K. B. 45; 27 Com. Cas. 160.

Annotation:—**Mentd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

1075. *Add. Annotations:*—**Mentd.** County Hotel & Wine Co. *v.* L. & N. W. Ry. (1918), 17 L. G. R. 274; S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211; Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

1082. *Add. Annotation:*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

1083. *Add. Annotation:*—**Refd.** Ruf *v.* Pauwels, [1919] 1 K. B. 660.

1083a. Act of 1889, s. 7—Appeal lies to Court of Appeal.]—COGSTAD (C. T.) & Co. *v.* NEWSUM (H.), SONS & Co., No. 1058a,

1083b. Loss of right to appeal—Acceptance of award.]—In an arbn. concerning a contract of sale of goods the umpire stated a special case in which he made three different awards, leaving the ct. to decide which was right. The judge having decided that the first award was right, applts. demanded & obtained payment of the amount of that award & gave a receipt therefor. They then appealed from the decision of the judge & contended that the second award was the right one:—*Held:* having demanded & accepted payment under the first award applts. were precluded from contending that it was wrong.—DEXTERS, LTD. *v.* HILL CREST OIL CO. (BRADFORD), [1926] 1 K. B. 348; 95 L. J. K. B. 386; 134 L. T. 494; 42 T. L. R. 212; 31 Com. Cas. 161, C. A.

Part IV.—The Award.

1086. *Add. Annotations:*—**Mentd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45; Rockingham Sisters of Charity *v.* R., [1922] 2 A. C.

1107a. —— Award signed by all three as arbitrators.]—Under a submission to arbn. each of two parties could appoint an arbitrator, arbitrators could appoint an umpire. The parties duly appointed arbitrators & the arbitrators appointed an umpire. An award was then made & was signed by these three persons, who added to their signatures the word "arbitrators":—*Held:* the third person who signed the award was properly appointed as umpire, he acted as umpire, & he really intended to sign as umpire, & the fact that he signed as arbitrator was only a matter to require a purely formal amendment.—BENABU & Co. *v.* PRODUCE BROKERS CO., LTD. (1921), 37 T. L. R. 609; *on appeal,* 37 T. L. R. 851, C. A.

PART IV. SECT. 2.

k j. - award
Alberta Act, R.
(c. 171) an
of thre
dition No. 23 in Sched. C. to the above Act, to determine the amount of loss, the decision of a majority of the arbitrators is binding.—GLASGOW UNDERWRITERS *v.* SMITH, [1924] 4 D. L. R. 801; [1924] S. C. R. 531; *affg.*, [1924] 1 D. L. R. 187; 1 W. W. R. 155; 20 Alta. L. R. 114.—**CAN.**

award was valid.—*Re* BALDWIN & WILLINSKY, [1925] 1 D. L. R. 1177; 56 O. L. R. 296.—**CAN.**

1100 v. — *Award by one.*]—*Held:* .—*Re* NATIONAL TRUST CO. & DISTRICT OF VALE, [1925] 3 D. L. R. 459.—**CAN.**

1106 ia. —— ——.]—*Held:* bind- & McDOUGALL *v.* STEPHEN *v.* MASTERS & [1925] 4 D. L. R. 684; 3 W. W. R. 493.—**CAN.**

1152a. —— Existence of written contract—Signature by one party only.]—To constitute a contract in writing it is not necessary that such contract should be signed by both parties, & the recital in an award of the existence of a contract in writing between the parties when in fact the contract has been signed by one of them only does not constitute an error in law on the face of the award sufficient to justify the ct. in setting it aside.—RUF (T. A.) & CO. *v.* PAUWELS, [1919] 1 K. B. 660; 88 L. J. K. B. 674; 121 L. T. 36; 83 J. P. 150; 35 T. L. R. 322; 63 Sol. Jo. 372, C. A.

1165. *Add. Annotations :*—**Mentd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45; Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

1172. *Add. Annotation :*—**Mentd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

1182. *Add. Annotation :*—**Refd.** *Re* Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315.

1187. *Add. Annotations :*—**Consd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497. **Mentd.** Manbre Saccharine Co. *v.* Corn Products Co., [1919] 1 K. B. 198; Clark *v.* Cox, McEuen, [1921] 1 K. B. 139; A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268.

1188. *Add. Annotations :*—**Refd.** Lebeaupin *v.* Crispin (1920), 124 L. T. 124; Sheik Mohammad Habib Ullah *v.* Bird (1921), 37 T. L. R. 405. **Mentd.** Montevideo Gas & Drydock Co. *v.* Clan Line Steamers (1921), 37 T. L. R. 544; Taylor *v.* Bank of Athens, Pinnock *v.* Bank of Athens (1922), 128 L. T. 795.

1263. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1281. *Add. Annotation :*—**Mentd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

1288. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1307. *Add. Annotation :*—**Mentd.** *Re* Boks & Peters, Rushton, [1919] 1 K. B. 491.

1357a. —— ——.]—COGSTAD (C. T.) & CO. *v.* NEWSUM (H.) SONS & CO., No. 1058a, *ante*.

1357b. —— ——.]—LARRINAGA & CO. *v.* SOCIETE FRANCO-AMERICAINE DES PHOSPHATES MEDULLA, No. 1067a, *ante*.

1361. *Add. Citations :*—88 L. J. K. B. 227; 119 L. T. 553; 83 J. P. 9.

Add. Annotation :—**Refd.** *Re* Fiscel & Mann & Cook, [1919] 2 K. B. 431.

1361a. —— ——.]—Arbitrators made their award in an alternative form stating a special case & giving to the parties the option of taking the opinion of the ct. upon the points of law involved in it if notice of intention to apply to the ct. was given before a date specified; & in the alternative making an award in favour of one of the parties if, as was the case, no such notice was given. The case was set down for argument in the special paper :—*Held :* the condition was reasonable & the award was good, so that there was nothing for the ct. to deal with.—LYON (J. L.) & CO., LTD. *v.* HADDOCK, PARKER & CO., [1919] W. N. 11.

1398. *Add. Annotation :*—**Mentd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1415a. —— —— Reserved for consideration if required.]—*Re* O'CONOR & WHITLAW'S ARBITRATION, No. 919a, *ante*.

1439. *Add. Annotation :*—**Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1461. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1109 viii. —— ——.]—Where the arbitrators did not meet together & sign the formal document in the presence of each other :—*Semble :* the award was invalid.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195; 13 O. W. N. 245.—**CAN.**

1109 ix. ——.]—RYE FARM CO. *v.* BRITISH OAK INSURANCE CO., LTD., [1924] 3 D. L. R. 706; 3 W. W. R. 16.—**CAN.**

PART IV. SECT. 5.

1125 x. ——.]—An award made upon an arbn. under Municipal Act is published when notice thereof is given by the arbitrators to the municipality.—*Re* SWEINSSON & MUNICIPALITY OF CHARLESWOOD, [1917] 1 W. W. R. 293 : 27 Man. L. R. 234.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 2.—A.

1161 xi. ——.]—The umpire is bound by the terms of the submission, & he cannot make an award not within its scope.—PORTER *v.* PORTER (1921), 55 I. L. T. 206.—**IR.**

PART IV. SECT. 8, SUB-SECT. 2.—B.

s i. ——.]—*Held :* the arbitrators had no power to include in their award interest on the amount found to be the value of the property from the date of taking possession.—TORONTO CITY CORPN. *v.* TORONTO RY. CORPN., [1925] A. C. 177, P. C.—**CAN.**

ss. *Reference of "accuracy" & "justice" of accounts.*]—*Held :* the arbitrator was appointed to adjust the accounts between the parties on a fair & equitable basis, & had a discretion whether any interest should be allowed to either party, & in the exercise of that discretion was not bound to apply any rule of law.—FISHER *v.* MATSON & CO., MATSON & CO. *v.* FISHER, [1918] N. Z. L. R. 1.—**N.Z.**

PART IV. SECT. 8, SUB-SECT. 2.—C.

1185 ii. —— *Award dismissing claim for short delivery.*]—*Held :* words "any claim or dispute arising in connection with this contract" in the arbn. clause included a claim for short delivery of goods.—GHAMANDI LAL-NARAIN DAS *v.* CHURANJI LAL-POKHAR MAL (1923), I. L. R. 4 Lah. 168.—**IND.**

1188 i. *Submission of any question arising under contract—Award giving damages for non-delivery.*]—Where a contract provided for a reference to arbn. of any question arising under it :—*Held :* the proper conclusion upon the evidence was that the parties, by their course of conduct before the arbitrators, established that the question as to the damages was a matter in dispute & a subject of the reference.—*Re* BEAVER WOOD FIBRE CO., LTD., [illegible]., [1920] 47 O. L. R. 590; 54 D. L. R. 672; 18 O. W. N. 281.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 2.—G.

g (p. 479) **i. ——** *Valuation to be fixed as in open market—Absence of any market.*]—CANADIAN PACIFIC RY. CO. *v.* BANK, [1917] 3 W. W. R. 99.—**CAN.**

q i. ——.]—The points for on a submission to arbn. were on which partner rested the responsibility for the [illegible] on which condition the partnership should be dissolved :—*Held :* this did not give jurisdiction to the arbitrator to award payment by one partner of damages because of premature dissolution of the partnership.—*Re* ARBITRATION ACT, *Re* GUYOT & VIGOUREL & AWARD MADE BY GOSSELIN, [1919] 3 W. W. R. 957.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 3.—D.

1286 iv. —— *Delivery of goods "in fair proportion to all imports."*]—*Held :* the direction to deliver goods "in fair proportion to all imports" was uncertain & lacking in finality & therefore not enforceable.—THOMPSON, MACGIFT & CO., LTD. *v.* MOODY (1920), 21 S. R. N. S. W. 125; 37 N. S. W. W. N. 267.—**AUS.**

PART IV. SECT. 8, SUB-SECT. 3.—E.

sb. *Award of sum subject to variation—"Good & special"*
NOBLE *v.* CAMPBELLFORD, [illegible] & WESTERN RY. CO. (1918), 21 Can. Ry. Cas. 380.—**CAN.**

sc. *Award for payment for working to "estimated" depth.*]—An award stated that a contractor was entitled to payment at the contract-price for the drilling to an estimated depth of 2,400 feet, saying nothing about the amount to which the contractor was thus entitled :—*Held :* the amount of the contract-price & credits [illegible] be ascertained by [illegible] in the award was definite & amounted to a fixing of the depth at 2,400 feet.—MCNAUGHT *v.* STOKES-STEPHENS OIL CO., LTD., [1919] 1 W. W. R. 952.—**CAN.**

1467. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1468. *Add. Annotation :*— **Refd.** Weber *v.* Birkett, [1925], 1 K. B. 720.

1472. *Add. Annotation :*— **Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1473. *Add. Annotation :* — **Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1477. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1497. *Add. Annotation :*—**Consd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1506. *Add. Annotation :* **Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1511. *Add. Annotation :* **Refd.** Caven *v.* Canadian Ry. (1925), 33 L. T. 774.

1593a. ——.]—A.-G. FOR MANITOBA *v.* KELLY, No. 238a, *ante*.

1598. *Add. Annotations :*—**Distd.** Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. **Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C.

1598a. .] Certain trawlers were insured as to three-quarters of their value in the B. Insurance Co. To save their vessels from destruction by enemy submarine, the owners cut away the trawls, which were not insured, & claimed a general average contribution against the co., of which the owners were members. The rules provided that all disputes should be settled in the first instance by a general meeting of the co., or, on appeal, by two arbitrators & an umpire, none of whom should be lawyers. The general meeting having refused the claim, the owners proceeded to arbn. under a submission which provided that "all matters in difference in reference to the said claim for a general average contribution are referred," etc. The umpire by his award ignored the claim for general average. On a motion to set aside the award : *Held :* it was bad as disclosing an error in law on the face of it ; &, having regard to the general terms of the submission, it was not open to resps. to say that a definite point of law had been submitted to arbn., as to which the decision of the arbitrator was final, & the award must be set aside. — ONS *v.* BRIXHAM FISHING SMACK INSURANCE CO., LTD. (1918), 118 L. T. 600 ; 14 Asp. M. L. C. 307 ; *sub nom. Re* PARSONS & BRIXHAM FISHING SMACK INSURANCE CO., LTD., 62 Sol. Jo. 381, D. C.

1598b. .]—An error in law on the face of an award means that one can find in the

: CO., LTD. *v.* N. S. W. 125 ; 37 N. S. W. W. N. 267.—**AUS.**

PART IV. SECT. 8, SUB-SECT. 9.—D.

1517 i. *Reference of two separate matters. One award.*]—*Held :* the award must be referred to the arbitrator to draw up two awards.—*Re* DREYFUS & S. A. MILLING & TRADING CO., [1923] S. A. S. R. 75.—**AUS.**

PART IV. SECT. 10.

1520 v. .]—Where an arbn. award is valid as to a part thereof & void as to another part, the valid portion, if severable from the rest, is enforceable.—CITY OF SWIFT CURRENT *v.* LESLIE, [1920] 1 W. W. R. 467 ; 52 D. L. R. 532.—**CAN.**

1541 ii. ——.]—An award con two directions :—*Held :* the could not be severe the first direction was second

award or in a document actually incorporated, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award & which is erroneous. Where it is impossible to say, from what is shown on the face of the award, what mistake, if any, the arbitrator has made, or that the arbitrator has tied himself down, on the face of his award, to some special legal proposition which is unsound, the award will stand.—CHAMPSEY BHARA & CO. *v.* JIVRAJ BALLOO SPINNING & WEAVING CO., [1923] A. C. 480 ; 92 L. J. P. C. 163 ; 129 L. T. 166 ; 39 T. L. R. 253, P. C.

Annotation:—**Mentd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

1599. *Add. Annotations :*—**Consd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87 ; A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395. **Mentd.** Payzu *v.* Saunders, [1919] 2 K. B. 581 ; Taylor *v.* Bank of Athens, Pinnock *v.* Bank of Athens (1922), 91 L. J. K. B. 776.

1603a. —— **Immaterial to decision.**]—BUERGER & CO. *v.* BARNETT, No. 1822a, *post*.

1614. *Add. Annotation :*—**Consd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268.

1622. *Add. Annotation :*—**Refd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

1624. *Add. Annotations :*—**Expld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391. **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1643. *Add. Annotations :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1644. *Add. Annotation :*—**Refd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1644a. ——.]—Though an award may be set aside for an error of law appearing on the face of it, & though a question of construction is, generally speaking, a question of law, yet, where a question of construction is the very thing referred for arbn., then the decision of the arbitrator upon that point cannot be set aside by the ct. only because the ct. would itself have come to a different conclusion. If it appears by the award that the arbitrator has proceeded illegally, for instance, that he decided on evidence which in law is not admissible or on principles of construction which the law does not countenance, then the arbitrator was entitled to supply the omission by an addition to the award.—DEBRET *v.* DEBRET, [1917] 3 W. W. R. 503 ; 10 Sask. L. R. 366.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 1.

1594 ii. —— ——.]—The ct. ..... to set aside an award where an error of law appears on the face of it.—*Re* CASWELL & CO., LTD. & DONALD & JACOBS, LTD., [1921] N. Z. L. R. 368.—**N.Z.**

1604 ii. —— *Apparent of award.*]—*Held :* the i the award invalid.—BEACH *v.* ELECTRIC POWER C OF ONTARIO, [1924] 4 D. L. R. O. L. R. 35.—**CAN.**

1606 vii. —— *Omission to mention n of property.*]—*Held :*

PART IV. SECT. 13, SUB-SECT. 2.—B. (a).

1626 i. *General reference of all matters in dispute.*]—*Held :* the parties were bound by the arbitrator's award however erroneous in law it might be. —NATIONAL MORTGAGE & AGENCY CO., LTD. *v.* BRAID & CO., [1923] N. Z. L. R. 933.—**N.Z.**

1630 vi. ——.]—Where a question of law has been submitted to the arbitrators their decision is not open to review.—*Re* MCNAUGHT & STOKES-STEPHENS OIL CO., LTD. (No. 3) (1919), 14 Alta. L. R. 118.—**CAN.**

there is error in law which may be ground for setting aside the award; but the mere dissent of the ct. from the arbitrator's conclusion on construction is not enough for that purpose.—KELANTAN GOVERNMENT *v.* DUFF DEVELOPMENT CO., [1923] A. C. 395; 129 L. T. 356; 39 T. L. R. 337; 67 Sol. Jo. 437, H. L.; *previous proceedings, sub nom.* DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385, C. A.

1645. *Add. Annotations:*—*As to* (1) **Apprvd.** Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. **Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1647. *Add. Annotation:*—**Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1667. *Add. Annotation:* **Consd.** Sutherland *v.* Hannevig, [1921] 1 K. B. 336.

1668a. —— — — **Act of 1889, s. 7 (c).**] An arbitrator in making his award gave two sets of costs to one of the parties in terms which were not sufficiently explicit, & subsequently on the request of one party added explanatory words & issued an amended award: *Held:* inasmuch as the original award was in the language intended by the arbitrator & neither contained words which he had meant to omit, nor omitted words which he had intended to insert, the fact that he had failed to choose apt words to convey his meaning was not an "accidental slip or omission" entitling him to amend his award under the above sect., & the amended award must be set aside. SUTHERLAND & Co. *v.* HANNEVIG BROTHERS, LTD., [1921] 1 K. B. 336; 90 L. J. K. B. 225; 37 T. L. R. 102; *nom. Re* SUTHERLAND & Co. & HANNEVIG BROTHERS, LTD., 125 L. T. 281; 15 Asp. M. L. C. 203, D. C.

1669. *Add. Annotation:* **Refd.** Sutherland *v.* Hannevig, [1921] 1 K. B. 336.

1698. *Add. Annotations:* **Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268. **Mentd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45; Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

1701a. — - **Liability to cross-examination.**] In June, 1913, claimants, R. & Co., effected an insurance with resps., an insurance co., whereby the insurance co. agreed that, if at any time during the period covered by the policy the premises of claimants should be destroyed by fire, & their business should be thereby interfered with or interrupted, they would pay to claimants monthly until such time as the reduction in turnover in consequence of the fire should have ceased, but not exceeding in all nine months, on account of annual net profit & charges as therein set forth, the same percentage on the amount by which the turnover in each month should in consequence of the fire be less than the turnover for the corresponding month of the year preceding the fire as the sum or sums thereby insured should bear to the total of the turnover for the last financial year. It was provided that the amount of the losses under the policy should be assessed by claimants' auditors, L. & G. A condition on the back of the policy provided for reference to arbn. of all differences arising out of the policy. The premises of claimants were destroyed by fire on July 22, 1913, a date within the period covered by the policy. G., a member of the firm of L. & G., duly assessed the amount of the loss suffered by claimants in respect of profits for the period of nine months succeeding the fire. Differences having arisen in regard to the payments under the policy, the parties went to arbn. G. was called as a witness by claimants at the arbn. proceedings, & stated that although it did not so appear on the face of the assessments he was at the time of signing the same satisfied that the losses of the turnover respectively therein stated were in fact sustained in consequence of the fire. There was no suggestion of any fraud on the part of the assessor: *Held:* as G., whether regarded as an arbitrator or an assessor, had been called to give oral testimony he could be cross-examined on all relevant issues & consequently could be cross-examined to show that he had failed to take into account certain considerations necessary for arriving at the reduction in the turnover of claimants due solely to the fire. BLOMER & Co. *v.* NORTH BRITISH MERCANTILE INSURANCE CO., [1915] 3 K. B. 277; 84 L. J. K. B. 1813; 113 L. T. 827. C.

1706. *Add. Annotations:* **Mentd.** Stollmeyer *v.* Trinidad Lake Petroleum Co., [1918] A. C. 198, n.; Slack *v.* Leeds Industrial Cooperative Soc., [1923] 1 Ch. 431.

1715. *Add. Annotation:* **Mentd.** Spencer *v.* Hemmerde (1922), 128 L. T. 33.

1738. After this case add "**Personal representative.**] *See* Vol. XXIV., p. 621, Nos. 6508, 6509, & *compare* original volume, pp. 393 *et seq.*"

PART IV. SECT. 13, SUB-SECT. 3.

1665 iv a. — - —.]— Where an arbitrator has made an award in respect of a claim involving the proof of a of items, an affidavit of the ng out the items in of which he has made his d, & the amount he awarded in ct. of each item of the claim, is in evidence.—HALLIGAN *v.* LAWSON (1922), 22 S. R., N. S. W. 501; 39 N. S. W. W. N. 201.—**AUS.**

1666 iii. —— - - - *Effect of statute - Arbitration Act*, 1914 (*c.* 65).] —*Held:* he arbitrator had power to amend award under s. 10 (*c*) of the above Act. —*Re* WHITE & CITY OF TORONTO (1917), 38 O. L. R. 337. **CAN.**

1671 vii. — - *Unless award not stating arbitrator's opinion*].— An appellate ct. sh to vary an award unless it is satisfied that the award did not truly represent the honest opinion of the arbitrators as to damages, or that their basis of valuation was erroneous.—*Re* SCOTT & OSHAWA TOWN (1922), 52 O. L. R. 504. **CAN.**

1671 viii. *I nent.*] - The arb arbitrator may, of the evidence, b ellate ct. LAKE awarded by consideration

RY CLUB (1915), 21 Can. Ry as. 360; 32 D. L. R. 219. - **CAN.**

PART IV. SECT. 15, SUB-SECT. 2. A. (b).

1723 xi. - -

erous proof d L. AND & NORTHERN v. MOORE 21 Can. Ry. C **CAN.**

PART IV. SECT. 15, SUB-SECT. 2. A. (c).

n .. -] Where arbn. proceed initiated by a provincial

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ed made a a result of such rdings.—HANEY *v.* CANADIAN NORTHERN RY. CO., [1917] 3 W. W. R. 95; 36 D. L. R. 674. **CAN.**

J.S.

1751. *Add. Annotation :* —**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1758. *Add. Annotation :* —**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1761. *Add. Annotation :* —**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1762. *Add. Annotation :* —**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1799a. — — Single judge of High Court.]—PRODUCE BROKERS, LTD. *v.* BLYTH, GREENE, JOURDAIN & CO., LTD., No. 1960a, *post*.

1822. *Add. Annotations :* —**Refd.** Buerger *v.* Barnett (1919), 89 L. J. K. B. 161 ; Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1822a. — — Question to be raised immaterial.]—(1) It is not misconduct on the part of an arbitrator or umpire, within the Act of 1889, s. 11, to refuse to state a case, under sect. 7 (b) or 19 of the Act, for the opinion of the ct. on a point of law, if his finding on a question of fact makes the question which would be raised by the case immaterial.

(2) An award is not vitiated by an error in law on the face of it, if the error is not material to the decision.—BUERGER & CO. *v.* BARNETT (1919), 89 L. J. K. B. 161 ; 120 L. T. 570 ; 35 T. L. R. 260 ; 63 Sol. Jo. 391, D. C.

1822b. — — When questions of law arise in an arbn. it is of the greatest importance that the right of the parties to obtain the assistance of the ct. at any period of the proceedings should be fully enforced, though the arbn. tribunal has not passed through all the stages of its own procedure providing for an appeal from the award. If the umpire by refusing to make his award in the form of a special case deprives the parties of the right to have questions of law, which are neither frivolous nor vexatious but are substantial, decided by the ct., he is guilty of misconduct & his award will be set aside.—*Re* FISCHEL & CO. & MANN & COOK, [1919] 2 K. B. 431 ; 121 L. T. 275 ; *sub nom.* FISCHEL & CO. *v.* MANN & COOK, 88 L. J. K. B. 1173, D. C.

1825a. Disregarding statute passed after hearing but before issue of award.]—(1) Resps. to an arbn. had hired of claimant, for a certain period, a number of horses which, on the outbreak of war & before the expiry of the period, were commandeered by the War Office. He then refused to pay the hire for the full period on the ground of frustration of the adventure. At the hearing of the arbn. on June 19, 1917, claimant did not press for hire after the seizure of the horses, & on July 31, 1917, the arbitrator issued his award, giving claimant the amount due up to the date of the seizure, but not afterwards. On July 10, 1917, Courts Emergency Powers Act, 1917 (c. 25), had come into operation, but there was nothing to show whether the arbitrator was or was not aware of the Act. On a motion to set aside the award on the ground of the technical misconduct of the arbitrator in not taking the statute into consideration :—*Held :* whether or not the arbitrator was aware of the Act, he had applied its principles, &, consequently, there was no misconduct ; the parties were not taken by surprise, & the award was good.

(2) It has been contended that the fact that the arbitrator did not know or take cognisance of the Act, which was passed after the hearing of the arbn. & before the issue of the award, constituted misconduct. I doubt very much whether that would amount to misconduct, although possibly it might amount to surprise (A. T. LAWRENCE, J.)—OSMOND *v.* WOOLLEY (1917), 87 L. J. K. B. 822 ; 118 L. T. 29 ; 34 T. L. R. 133, D. C.

1826. *Add. Annotation :*—**Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1051.

1827. *Add. Annotation :* —**Refd.** *Re* Boks & Peters, Rushton, [1919] 1 K. B. 491.

1839a. Surprise—What amounts to.]—OSMOND *v.* WOOLLEY, No. 1825a, *ante*.

1850a. — — Objection to authority of arbitrator to determine dispute.]—The owner of a timber estate sold the whole of the timber thereon to a timber co. in consideration of fully paid up shares in the co. Subsequently by policies effected in his own name with several insurance cos. he insured this timber against fire. The greater part of the timber having been destroyed by fire, he sued the insurance cos. to recover the loss, but the actions were stayed & the matter was referred to arbn. in pursuance of the conditions contained in

PART IV. SECT. 15, SUB-SECT. 2.—D.

ad. *Jurisdiction of court ordering reference.*] Where an order for a reference is made with the consent of the solrs. on both sides, & arbitrators are appointed in pursuance of such order, & the arbitrators take

for both parties taking no
to the regularity of the
the parties will not be permitted, afterwards, to attack the award or the subsequent proceedings on the ground that the ct. by which the order for reference was made had no jurisdiction to do so.—HALL *v.* ELECTRIC COMRS. OF LAWRENCETOWN, [1921] 54 N. S. R. 283 ; 57 D. L. R. 535.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 1.

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Held : the award of the
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must be to the Appellate Div. of the Supreme Ct.—SNIDER *v.* MILLER, [1924] 2 D. L. R. 617 ; 1 W. W. R. 1163 ; 20 Alta. L. R. 237 ; *affg.*, [1924] 1 D. L. R. 198 ; [1923] 3 W. W. R. 1376.—**CAN.**

1802 in. — — — — —.] In a
sion to arbn. the parties thereto
that the Arbn. Act should not apply therein, & that the decision of the arbitrator should be final & binding upon both parties :—*Held :* this agreement was void as against public policy.—BEACH *v.* HYDRO-ELECTRIC POWER

D. L. R. 993 ; 56 O. L. R. 35.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 2.—A.

ct. — — —] Unless in the procedure adopted by the arbitrators there has been something radically wrong or vicious an award cannot be impeached on the ground that the technical web of judicial procedure & rules of evidence which surround judicial procedure were not strictly adhered to.—MAURIC
; HEE *v.* U MIN NYUN (1925), L. R. 3 Ran. 387.—**IND.**

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order of reference not fixing a time for delivery of the award was *prima facie* liable to be set aside, but Supreme Ct. Ordinance, 1876, of the Gold Coast, Ord. 52, rr. 12 (c) & 13, prevented the omission from having that effect.—YAMIKE KWEKU *v.* ANNOR ADJAYE, [1926] A. C. 755 ; 95 L. J. P. C. 157 ; 135 L. T. 642.—**GOLD COAST.**

PART IV. SECT. 16, SUB-SECT. 2.—B.

ct. —— *Refusal to state case.*]—Neglect by an arbitrator to state a case for the opinion of the ct. after being definitely asked by either of the
to do so is *prima facie* to
conduct for which his award may be set aside.—FISHER *v.* MATSON & CO., MATSON & CO. *v.* FISHER, [1918] N. Z. L. R. 1.—**N.Z.**

1811 ii a. ——.]—Where in a paving contract with a city the city's engineer is made arbitrator, he must
against being unduly influenced by employers ; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.—BLOME *v.* CITY OF REGINA, [1920] 1 W. W. R.
50 D. L. R. 93 ; 13 Alta. L. R.
—**CAN.**

the policies. Claimant was the sole shareholder in the co. & was also a creditor of the co. to a large extent. The arbitrator held that claimant had no insurable interest in the goods insured & disallowed the claim:— *Held:* claimant having allowed the point of want of insurable interest to be raised before the arbitrator without objection, it was not open to him to call in question the authority of the arbitrator to entertain it.—MACAURA *v.* NORTHERN ASSURANCE CO., [1925] A. C. 619; 94 L. J. P. C. 154; 133 L. T. 152; 41 T. L. R. 447; 69 Sol. Jo. 777; 31 Com. Cas. 10, H. L.

Annotation:—**Mentd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

1851a. —— ——.]—DEXTERS, LTD. *v.* HILL CREST OIL CO. (BRADFORD). No. 1083b, *ante*.

1857a. By motion.] —Any objection to an award on the ground of misconduct or irregularity on the part of an arbitrator must be taken by motion to set aside or remit the award, & if not so taken [within the time limited by R. S. C., Ord. 64, r. 14] cannot be pleaded in answer to an action on the award (*per* CUR.).—OPPENHEIM & CO. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196, P. C.

Annotation:—**Apld.** Scrimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174.

1857b. ——.]—SCRIMAGLIO *v.* THORNE No. 135a, *ante*.

1857c. —— **Entered in special paper.]** A to set aside an award which has been stated in the form of a special case should be entered in the special paper, & both the motion & the special case should be argued before the judge who takes the special paper. Where a special case has been set down in the special paper & subsequently notice of motion is given to set aside the award, the motion should be set down also in the special paper.—*Re* COWAN BROTHERS, LTD. & RYMER (HENRY) & CO., [1919] W. N. 140, D. C.

1869. *Add. Annotation:*—**Reld.** *Re* Campbell (1919), 88 L. J. Ch. 519.

1912a. —— **Failure to apply within time limit.]** —IM & CO. *v.* MAHOMED HANEEF, No. 1857a, *ante*.

1912b. —— ——.]—SCRIMAGLIO *v.* THORNETT & FEHR, No. 135a, *ante*.

1925. *Add. Annotations:*—**Reld.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1943. *Add. Annotations:*—**Reld.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1950a. Misconduct.] —OPPENHEIM & CO. *v.* MAHOMED HANEEF, No. 1857a, *ante*.

1954a. ——.]—Where an arbitrator in making his award deals with the costs of the award & his own personal costs, but does not mention the costs of the parties in the reference, the ct. will not presume that he has exercised his discretion to make no order as to costs, or to leave each side to pay their own costs, but will remit the award to the arbitrator to exercise his discretion in express terms.—*Re* BECKER, SHILLAN & CO. & BARRY BROTHERS, [1921] 1 K. B. 391; 90 L. J. K. B. 316; 124 L. T. 601; *sub nom.* BECKER, SHILLAN & CO. *v.* BARRY BROTHERS, 37 T. L. R. 101, D. C.

Annotations:—**Consd.** Bradshaw *v.* Air Council, (1926) 229. **Reld.** Larrinaga *v.* Soc. Franco-Americaine s de Medulla (1922), 92 L. J. K. B. 45.

1960a. ——— **By motion—Before single judge of High Court.]** A judge of the High Ct. sitting alone may entertain a motion to set aside or remit for further statement an award stated in the form of a special case. PRODUCE BROKERS, LTD. *v.* BLYTH, GREENE, JOURDAIN & CO., LTD. (1918), 88 L. J. K. B. 597; 119 L. T. 311; 34 T. L. R. 419.

Annotation:—**Folld.** *Re* Cowan & Rymer, [1919] W. N. 140.

1960b. ——.] OPPENHEIM & CO. *v.* MAHOMED HANEEF, No. 1857a, *ante*.

1981. For the paragraph in original volume substitute the following paragraph:

Foreign award—Whether enforceable as judgment of foreign court.]—An award in a foreign arbn. [unenforceable in the foreign country without an enforcement order] is not a decision which a ct. here ought to recognise as a foreign judgment, & cannot be enforced.—MERRIFIELD, ZIEGLER & CO. *v.* LIVERPOOL COTTON ASSOCN., LTD. (1911), 105 L. T. 97; 55 Sol. Jo. 581.

Annotation:—**Reld.** Harrop *v.* Harrop, [1920] 3 K. B. 386.

PART IV. SECT. 16, SUB-SECT. 3.

1852 xi. —— *Consent to extension of time for making award.]—Held:* the act of consent to extension of time, & recognition of the propriety of the arbitrators making the award, precluded objection to the award on the ground of misconduct.—POWIS *v.* VANCOUVER (CITY), RAMAGE *v.* VANCOUVER (CITY) (1917), 23 B. C. R. 180. —CAN.

1852 xii. ——.] — Where applts. went on with an arbn. without objection after an irregularity had occurred:— *Held:* they were precluded from to set aside the award on the of the irregularity. — I A *v.* U PYINNYADIPA (1923), I. L. R. 1 Ran. 15.—IND.

1852 xiii. ——.]—A reference was made to arbiters to determine the amount payable by a landlord to his tenant in respect of sheep stock:— *Held:* pursuer having full knowl of the nature of the stock that tendered to him, & having acce the stock & dealt with it as if it was own, was barred from objecting to the award of the oversman.—

v. ROBERTSON (1919), 56 Sc. L. R. 305; [1919] 1 S. L. T. 260.—SCOT.

si. *Award following opinion of court on case stated.]—Held:* the award might be set aside notwithstanding that it followed the opinion of the ct. upon a case stated under Arbn. Act, s. 29.—*Re* MCCONKEY'S ARBITRATION (1920), 17 O. W. N. 329; 47 O. L. R. 411.—CAN.

PART IV. SECT. 16, SUB-SECT. 4.—C.

1898 i. *Grounds for extension—Not mistake of counsel on question of law or practice.]*—On a motion to extend the time for making an application to set aside an award:—*Held:* where the rules require special circumstances to be shown upon an application for extension of time, the mistake of counsel or solr. upon a question of law or practice does not constitute a special circumstance justifying the intervention of the ct.—*Re* SWEINSON & MUNICIPALITY OF CHARLESWOOD, [1917] 1 W. W. R. 293; 27 Man. L. R. 234.—CAN.

sk. *Under Consolidated Municipal Act, 1922, ss.* 333, 345 (1).]—*Re* VANEY

S CARLETON COUNTY, [1924] 4 D. L. [955; 56 O. L. R. 129 CAN.

PART IV. SECT. 17, SUB-SECT. 2.

si. *Under 2 Edw. 7, c. 107, ss. 12, 21—Grounds for remitting.]*—*Re* COLEMAN & TORONTO & NIAGARA POWER CO. (1917), 40 O. L. R. 130; 38 D. L. R. 65.—CAN.

PART IV. SECT. 17, SUB-SECT. 3.

ri. ——.]—Unless there is a mistake in law or fact evident on the face of the award itself, or the arbitrator admits that he has made a mistake in law or fact, or there has been fraud or corruption, the award will not be referred back.—*Re* FOX & C DATED MINING & SMELTI CANADA, [1925] 1 D. L. R. 2 3 W. W. R. 861.—CAN.

rii. —— *Arbitrators take.]*—The ct. will not remit an award because the arbitrators allege a mistake involving an impeachment of their award.—ROBINS *v.* ANDREWS, [1923] 2 D. L. R. 353; 1 W. W. R. 963.—CAN.

1985. *Add. Annotation :* -**Mentd.** *Re* Campbell, [1920] 1 Ch. 35.
After this case add "*See, now*, R. S. C., Ord. 11, r. 8a."

1985a. Grounds for granting or refusing order—Objection to award.] Where there is no objection to an award or where the objection raised is one which can easily be disposed of, the summary procedure provided by the Act of 1889, s. 12, is prompt & convenient; but where there are matters which may gravely affect the validity of the award or the right to proceed under it, it is proper that they should be dealt with by an action in which the facts can be fully ascertained, & no order the sect. should be made giving leave to proceed summarily under the award. *Re* BOKS & CO. & PETERS, RUSHTON & CO., 1 K. B. 491; 88 L. J. K. B. 351; 120 L. T. 516, C. A.

1985b. Award against Crown.] An award against the Crown in an arbn. under the Act of 1889 cannot, for the purpose of enforcement, be treated as a judgment or decree on a petition of right, & under sect. 12 of that Act leave to enforce the award as a judgment or order will be refused. -GREEN BOARD OF TRADE (1923), 92 L. J. K. B. 956; 130 L. T. 15; 39 T. L. R. 630; 67 Sol. Jo. 725, C. A.

1986. *Add. Annotation :* **Distd.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121.

2043. *Add. Annotation :* -**Mentd.** Spencer *v.* Hemmerde (1922), 128 L. T. 33.

2048. *Add. Annotation :* **Mentd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

2053. *Add. Annotation :* **Mentd.** L. & N. E. Ry. *v.* Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

2056a. .] OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante*.

2059. *Add. Annotation :* **Retd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

2141. *Add. Annotation :*—**Mentd.** *Re* Boks & Peters, Rushton, [1919] 1 K. B. 491.

2187. *Add. Annotations :*—**Apld.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282.

2213. *Add. Annotation :*—**Consd.** Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

2226. *Add. Annotation :*—**Mentd.** Sutherland *v.* Hannevig, [1921] 1 K. B. 336.

2326. *Add. Annotation :* -*As to* (1) **Refd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717.

2332. *Add. Annotations :* -**Consd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717. **Refd.** Terry *v.* Gould (No. 2) (1924), 69 Sol. Jo. 212; Weber *v.* Birkett, [1925] 1 K. B. 720.

2336. *Add. Annotation :*—**Consd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717.

2340. *Add. Annotations :* -**Consd.** Keen *v.* Towler (1921), 41 T. L. R. 86. **Apld.** King *v.* Sunday Pictorial Newspapers (1920) (1924), 133 L. T. 397.

2344. *Add. Annotation :* **Apld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 3

2352. *Add. Annotation :*—**Refd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2353. *Add. Annotation :* -**Consd.** Williams *v.* Jones, [1926] 1 K. B. 255.

2354. *Add. Annotation :* *As to* (1) **Consd.** Williams *v.* Jones, [1926] 2 K. B. 37.

2355a. Whether more than one issue R. S. C., Ord. 65, r. 2. WILLIAMS *v.* JONES (STANLEY) & Co., [1926] 2 K. B. 37; 95 L. J. K. B. 471; 134 L. T. 652; 70 Sol. Jo. 163, C. A.

2358. *Add. Annotation :*—**Apld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2361a. Award not providing for costs of parties.]—*Re* BECKER, SHILLAN & Co. & BARRY BROTHERS, No. 1954a, *ante*.

2418. *Add. Annotation :* **Mentd.** *Re* Barker's Settlmt., Knocker *v.* Vernon Jones, [1920] 1 Ch. 527.

PART IV. SECT. 19, SUB-SECT. 4. C.

2050 iii a. .] R., an arbitrator, in the absence of & without notice to one of the parties, made an award: *Held:* although the award might have been set aside for misconduct of the arbitrator if moved against in time, yet, the award being final, the misconduct could not be set up as an answer to an action upon the award. -TOURANGEAU *v.* SANDWICH WEST TOWNSHIP, [1920] 48 O. L. R. 306; 56 D. L. R. 83. **CAN.**

2050 iii b. .] -In a suit in India upon an award made upon a submission to arbn. in England, irregularity or misconduct in arriving at the award is not a defence. OPPENHEIM & Co. *v.* MAHOMED HANEEF (1922) [A. C. 482; 91 L. J. P. C. 205, 127 L. T. 196; 49 L. R. Ind. App. 174. -**IND.**

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PART IV. SECT. 19, SUB-SECT. 8.

sm. *Arbitration Act*, 1909, s. 13-
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directly on an award which merely determines rights, but says as to the amount to which the ful party is entitled. *Re* MCNAUGHT & STOKES STEPHENS OIL CO., [1918] 3 W. W. R. 337; 13 D. L. R. 7.--**CAN.**

sn. *Arbitration Act, R. S. M.*, 1913 (c. 9) -*Award under Municipal Act.*]—Arbn. Act, R. S. M., 1913 (c. 9), applies to awards under Municipal Act unless expressly conflicting with the latter Act. Where an award on an arbn. under Municipal Act is made on a written submission & fixes not only the amount but also the liability, it may be entered on application as a judgment of the Ct. of King's Bench &

RURAL ICIPALITY OF CHARLESWOOD, 3 W. W.
D. L. R **CAN.**

PART IV. SECT. 20, SUB-SECT. 1. -D. (b).

1i. — *Arbitration Act, R. S. M.*, 1913 (c. 9)—*Greater Winnipeg Water District Act*, 1913 (c. 22).]—*Re* IVERSON & GREATER WINNIPEG WATER DISTRICT, [1921] 1 W. W. R. 621; 57 D. L. R. 184; 30 Man. L. R. 98. **CAN.**

1ii. — *Arbitration Act*, 1908.] An order provided that the costs of the reference & award should be within the discretion of the arbitrator under & subject to the above Act:- *Held:* the discretion of arbitrators with re to costs was not limited by principles which the cts. apply. -TYNAN *v.* FORBES, [1921] N. Z. L. R. 735.--**N.Z.**

PART IV. SECT. 20, SUB-SECT. 6.

sp. *Power of arbitrator to fix counsel's fees.*] -On an arbn. as to costs in an action, the arbitrator has power to fix the counsel's fees.—CHATTERSON *v.* DUTTON, [1917] 2 W. W. R. 393; 33 D. L. R. 622; 10 Sask. L. R. 169.—**CAN.**

st. *Power of arbitrator to postpone taxation.*]--An arbitrator on making his award may reserve the question of the costs of the arbn. & tax them subsequently.—CHATTERSON *v.* DUTTON, [1917] 2 W. W. R. 393; 33 D. L. R. 622; 10 Sask. L. R. 169.—**CAN.**

2395 vii. ——— - —.]—The taxing officer having disallowed the fees for senior counsel on the taxation of a bill of costs in an arbn. case on the ground that two counsel were in no way necessary:—*Held:* as the arbn. involved a sum of nearly £6,000 & the evidence was of a highly technical nature, the services of a senior counsel were properly employed, & his fees & the charges should have been l.—GARLICK & Co. *v.* POY (1917), 38 N. L. R. 59.—**S. AF.**

2414 viii. ——.]—NEW BRUNSWIC ELECTRIC POWER COMMISSION *v.* QUI TON, [1924] 4 D. L. R. 345.—**CAN.**

Part V.--References by Order of Court.

2443. *Add. Annotations :*—**Mentd.** Countess Warwick S.S. Co. *v.* Nickel Soc. Anon., Anglo-Northern Trading Co. *v.* Emlyn, Jones & Williams (1917), 87 L. J. K. B. 309; Robinson *v.* R., [1921] 3 K. B. 183.

2447. *Add. Annotation :* **Mentd.** Sack *v.* Jones [1925] Ch. 235.

2455. *Add. Annotation :*—**Mentd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691.

2456. *Add. Annotation :* **Mentd.** Robinson *v.* R., [1921] 3 K. B. 183.

2459. *Add. Annotation :* **Mentd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691.

2523. *Add. Annotation :*—**Mentd.** Taylor *v.* Davies, [1920] A. C. 636.

2557. *Add. Annotations :* *As to* (1) **Consd.** *Re* Soc. les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202. *As to* (2) **Consd.** *Re* Soc. les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202; Light *v.* West, [1926] 2 K. B. 238.

2580a. No power to alter his own order. Where a referee acts deliberately, even though he may not realise that what he is doing does not carry out his full intention, he has no jurisdiction under R. S. C., Ord. 28, r. 11, to alter his report subsequently. BENTLEY *v.* O'SULLIVAN (1925), 133 L. T. 189; 41 T. L. R. 371; 69 Sol. Jo. 509, D. C.

2580b. Power to set aside his own order. In an action tried by an official referee judgment was given against defts. by default. Defts. applied to the judge in chambers to set aside the judgment of the official referee & to order a new trial. The application was not made within six days after the trial before the official referee, but no objection in regard to time was taken by pltfs. before the judge in chambers. The judge referred to the official referee the application to set aside his own judgment. At the hearing of the application the official referee himself took the point that the application to set aside his judgment had not been made within six days after the trial: & he further held that, having regard to the concluding words of R. S. C., Ord. 59a, r. 3 (b), he had no jurisdiction to set aside his own judgment: *Held:* (1) the objection in regard to time, not having been taken at the earliest opportunity, could not be relied upon by pltfs. on the appeal: (2) as under R. S. C., Ord. 36, r. 50, the official referee had "the same authority in the conduct of any reference or trial as a judge of the High Ct.," he had jurisdiction to set aside his own judgment, & the words "save as herein provided, no application for a new trial before a referee shall be made" at the conclusion of Ord. 59a, r. 3 (b), referred only to the procedure to be followed in appeals from referees to the Divisional Ct. LONDON STEAMSHIP & TRADING CORPN., LTD. *v.* RUSSIAN VOLUNTEER FLEET (1926), 135 L. T. 607; 42 T. L. R. 632; 70 Sol. Jo. 838, D. C.

2591. *Add. Annotations :* **Mentd.** Evans *v.* Shotton (1918), 87 L. J. Ch. 527; Citron *v.* Cohen (1920), 36 T. L. R. 560; Woodfield *v.* Bond, [1922] 2 Ch. 40; Anstruther-Gough-Calthorpe *v.* McOscar, [1924] 1 K. B. 716; Hewitt *v.* Rowlands (1924), 131 L. T. 757.

2593. *Add. Annotation :* **Refd.** Ruf *v.* Pauwels, [1919] 1 K. B. 660.

2595. *Add. Annotation :* **Mentd.** Williams *v.* Jones, [1926] 1 K. B. 255.

2598. *Add. Annotations :* **Mentd.** Ellis *v.* Torrington (1919), 35 T. L. R. 531; S.S. Celia *v.* S.S. Volturno, [1921] 2 A. C. 544; Calthorpe *v.* McOscar, [1923] 2 K. B. 573.

2599. *Add. Citation :* 16 L. J. Q. B. 136.

2603. *Add. Annotations :* *As to* (1) **Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. *As to* (2) **N.F.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

2610. *Add. Annotation :* **Mentd.** *Re* Jewell's Settlmt., Watts *v.* Public Trustee, [1919] 2 Ch. 161.

2611a. Costs. In an action upon a contract in the High Ct. judgment was given for pltf. for an amount to be ascertained on taking an account between the parties, with costs of the action. This judgment was dated & entered on Apr. 8. The referee took the account & ascertained the amount to be £83 10s. & on Nov. 29 indorsed the order accordingly. On the next day & before final entry of the completed order, the judge, upon pltf.'s application, ordered the costs to be taxed on the High Ct. scale: *Held:* in the circumstances the judge had jurisdiction under County Cts. Act, 1919 (c. 73), s. 11, to award costs on the High Ct. scale, for until the result of the account was ascertained the question of costs could not be finally determined. LIGHT *v.* WEST (WILLIAM) & SONS, LTD., [1926] 2 K. B. 238; 95 L. J. K. B. 557; 134 L. T. 693; 42 T. L. R. 311; 70 Sol. Jo. 401, C. A.

2612. *Add. Annotation :* **Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

PART V. SECT. 1, SUB-SECT. 4.

a i. —— *"Acting" Deputy Registrar of Supreme Court.*]—*Held:* while the validity

l, yet as the above officer had

a judge

of first instance should uphold the appointment unless fully satisfied that there was no power of making it, especially where, as in this case, the reference had proceeded without objection on the point.—FUSARELLI *v.* IOCO TOWNSITE CO., [1922] 1 W. W. R. 1238.—**CAN.**

PART V. SECT. 1, SUB-SECT. 5.

—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.

2474 ii. — AVORY & SON *v.* PARKE (1917), 12 O. W. N. 4; 39 O. L. R. 74; 35 D. L. R. 71. **CAN.**

PART V. SECT. 2, SUB-SECT. 1. D.

o i. — *Action on building contract.*] ROGERS PIPER & SPENCER CO. *v.* MILLER (1921), 64 D. L. R. 115; 61 O. L. R. 265. **CAN.**

PART V. SECT. 2, SUB-SECT. 6.

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cient.—JAMIESON *v.* JA
1 W. W. R. 63.—**CAN.**

Part VI.—Application of Arbitration Act, 1889, to References under Statute.

2614. *Add. Annotation :*—**Mentd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

2618. *Add. Annotations :*—**Consd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391. **Mentd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

AUCTION AND AUCTIONEERS.

Part II.—Auctioneer's Licence.

15a. **Use of initials "A.A.I."**]—Pltf. Bowler & his co-pltf. Blake carried on in partnership the business of auctioneers & estate agents at P. & G., & in May, 1920, deft. entered their employment as an outside canvassing & negotiating clerk under a written agreement of service which provided (*inter alia*) that either party could terminate the employment on giving seven days' notice in writing & (clause 5) "after the termination from any cause of the employment aforesaid the clerk shall not for the term of one year carry on or be interested in carrying on the business of auctioneers & estate agents after such termination directly or indirectly assist as clerk manager or in any other capacity in the carrying on of such business within the borough of P. or in the town of G." In Sept. 1920, pltfs. duly terminated deft.'s employment, & on leaving their service he at once commenced business on his own account as an estate agent within the prohibited area, describing himself as "C. Lovegrove, A.A.I., Estate Agent," the initials A.A.I. meaning Associate of the Auctioneers' Institute, but he did not take out an auctioneer's licence nor do any business as an auctioneer: —*Held*: deft. had not by the use of the initials A.A.I. held himself out to be an auctioneer. BOWLER v. LOVEGROVE, [1921] 1 Ch. 642; 90 L. J. Ch. 356; 124 L. T. 695; 37 T. L. R. 421; 65 Sol. Jo. 307.

Part III.—Authority of Auctioneer.

21. *Add. Annotations*:—**Mentd.** Chillingworth v. Esche (1923), 129 L. T. 808; Monnickendam v. Leanse (1923), 39 T. L. R. 445.

57. *Add. Annotation*:—**Consd.** Cohen v. Roche (1926), 95 L. J. K. B. 945.

59. *Add. Annotation*:—**Refd.** Cohen v. Roche (1926), 95 L. J. K. B. 945.

68. *Add. Annotation*:—**Refd.** Cohen v. Roche (1926), 95 L. J. K. B. 945.

73. *Add. Annotations*:—**Mentd.** Chillingworth v. Esche (1923), 129 L. T. 808; Monnickendam v. Leanse (1923), 39 T. L. R. 445.

76a. **——— Entry of purchaser's name—Auctioneer's name printed on catalogue.**]—Pltf. bought for £60 at an auction one of the lots, which was the property of deft., who was the auctioneer. The lot was included in the printed catalogue, the whole of which was pasted into the auctioneer's book, & after the lot in question was knocked down to pltf. deft. wrote against its description in the book the price & pltf.'s trade name. Deft.'s name was nowhere written by him in the book, but his printed name appeared on the front page of the catalogue pasted in the book. Deft. refused to hand over the goods on the ground that the lot in question had been the subject of a "knock-out" to which pltf. had been a party. In an action for breach of contract deft. pleaded that there was no memorandum signed by him within Sale of Goods Act, 1893 (c. 71), s. 1 (1): *Held*: (1) the existence of a "knock-out" did not afford any defence to the action; (2) deft.'s printed name, having been authenticated by his writing down the price & the purchaser's name, was a sufficient signature, & there was a sufficient note or memorandum of the contract, & pltf. was entitled to recover. COHEN v. ROCHE (1926), 95 L. J. K. B. 945; 42 T. L. R. 671; 70 Sol. Jo. 942.

Part IV.—Conduct of the Sale.

Add. Annotation:—**Mentd.** Rawlings v. General Trading Co., [1921] 1 K. B. 635.

95. *Add. Annotation*:—**Mentd.** Yandle v. Sutton Young v. Yandle, [1922] 2 Ch. 199.

107. *Add. Annotation*:—**Mentd.** Said v. Butt [1920] 3 K. B. 497.

120. *Add. Annotation*: *Generally*, **Mentd.** Said v. Butt, [1920] 3 K. B. 497.

126. *Add. Annotation*:—**Mentd.** Auerbach v. Nelson, [1919] 2 Ch. 383.

131. *Add. Annotation*: **Mentd.** *Re* Clayton, Smith v. Clayton, [1920] 1 Ch. 257.

PART II.

ition of provincial for municipal licence.] — A person who has obtained a provincial licence as auctioneer under Auctioneers & Pedlers' Act, R. S. A., 22 (c. 39), may be compelled to out a municipal licence.—R. (MORRIS) v. STIMMEL, [1923] 4 D. L. R. 955; 3 W. W. R. 1185.—CAN.

sb. ——— ——— *Power of city—Cannot arbitrarily refuse licence.*]—MOOSE JAW v. TAYLOR, [1924] 1 W. W. R. 1063.—CAN.

sc. ——— ——— ——— *Cannot arbitrarily* E JAW v. TAYLOR, [1924] 1 W. W. R. CAN.

cl. — *licensed by province.*]—MOOSE JAW v. [1924] 1 W. W. R. 1063.—CAN.

PART IV. SECT. 3, SUB-SECT. 2.

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Co., LTD. v. HEN-
561.—S. AF.

134. *Add. Annotations :*--**Refd.** Beyfus *v.* Lodge, [1925] Ch. 350. **Mentd.** Simpson *v.* Gilley

147. *Add. Annotations :* —**Mentd.** *Re* Lavey, *Ex p.* Trustee, [1919] B. & C. R. 116; French *v.* Gething, [1922] 1 K. B. 236.

148. *Add. Annotation :* --**Apld.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

149. *Add. Annotation :*—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

150. *Add. Annotation :* **Consd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

151a. [illegible] —At a sale by public auction of surplus property belonging to the Ministry of Munitions pltf. & deft. agreed, in order to avoid competition, that deft. alone should bid for certain goods, & that the goods, if purchased, should be divided equally between them. In pursuance of that agreement pltf. abstained from bidding & the goods were knocked down to deft. Deft. subsequently repudiated the agreement. In an action by pltf. to recover one moiety of the goods purchased or the value thereof over & above the price paid at the auction.—*Held :* the agreement was not illegal, & judgment should be entered for pltf.—RAWLINGS *v.* GENERAL TRADING CO., [1921] 1 K. B. 635; 90 L. J. K. B. 404; 124 L. T. 562; 37 T. L. R. 252; 65 Sol. Jo. 220; 26 Com. Cas. 171, C. A.

Annotation :—**Apld.** Cohen *v.* Roche, [1927] 1 K. B. 169

151b. [illegible] —(COHEN *v.* ROCHE, No. 76a.

152. *Add. Annotation :*—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

153. *Add. Annotation :* -**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

159. *Add. Annotation :* -**Mentd.** Christoforides *v.* Terry, [1924] A. C. 566.

Part V.—Deposit.

184. *Add. Annotations :* **Mentd.** Chillingworth *v.* [illegible] (1923), 129 L. T. 808; Monnickendam [illegible]se (1923), 39 T. L. R. 115.

192. *Add. An* **Refd.** [illegible]s *v.* Lodge, [1925] C[illegible]

194. *Add. A* [illegible] *:* **Mentd.** Akt. Reidar *v.* Arcos (1926), [illegible] T. L. R. 737.

Part VII.-- Rights and Duties in Relation to Vendor.

213. *Add. Anno* [illegible] *:* **Refd.** Cohen *v.* Roche

226. *Add. Annotation :* **Mentd.** Schiller *v.* Petersen (1924), 130 L. T. 810.

255. *Add. Annotations :* **Refd.** Page *v.* Sully (1919), 63 Sol. Jo. 55; Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

260. *Add. Annotation :* -**Mentd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

263. *Add. Annotations :* **Consd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83. **Mentd.** Adams *v.* Morgan, [1923] 2 K. B. 234.

268. *Add. Annotation :*—**Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234.

Part VIII.—Rights and Liabilities in Relation to Purchaser.

273. *Add. Annotations :* **Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410. **Refd.** Page *v.* Sully (1918), 63 Sol. Jo. 55.

280a. [illegible] **Option to resell on purchaser's default.** --Goods were put up for sale by auction, the conditions of sale printed on the auctioneers' catalogue providing: "The lot to be taken away & paid for the day after sale," & "upon failure of complying with the above conditions all lots uncleared within the time aforesaid shall be resold." A purchaser, through his own negligence, bid for a lot for which he had not intended to bid, & the lot knocked down to him. He afterwards

PART IV. SECT. c.

ff entitled to
HALIFAX AUTOMOBILE CO. *v.* DREW [1924] 1 D. L. R. 891; 57 N. S. R. 1.—**CAN.**

PART IV. SECT. 9.

148 vi. [illegible] —A combination among intending purchasers at an unreserved auction sale to stifle competition by not against one another is a the seller, & the auct not bound to recognise a bid by a of such a combination.--NEUGEBAUER & CO., LTD. *v.* HERMANN, [1923] App. D. 561.—**S. AF.**

151 i. *Knock-out sale—Enforcement of agreement between parties.*]—GRANT *v.* WHITZMAN (1924), 55 N. S. R. 16.—**CAN.**

endeavoured to persuade the auctioneers to put up the lot for sale again, but they declined. Upon his refusing to pay, an action for the purchase price was brought by the auctioneers, & the purchaser contended that under the conditions of sale it was obligatory upon the auctioneers to resell the lot in question, & that he could be charged only with any deficiency upon resale :- *Held :* the words "all lots uncleared shall be resold" did not impose any obligation upon the auctioneers, but merely conferred upon them an option of reselling at their discretion, & the auctioneers were entitled to recover the full price at which the lot was knocked down to the purchaser. ROBINSON, FISHER & HARDING *v.* BEHAR (1926), 13 T. L. R. 66, D. C.

282. *Add. Annotation :* - **Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

289. *Add. Annotation :* —**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

293. *Add. Annotation :* —**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

293a. - - - - - -] PAGE *v.* SULLY, No. 301a, *post.*

295. *Add. Annotation :* — **Distd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

296. *Add. Annotation :* - **Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

301a. Non-delivery - Goods included in lot by mistake.]—In the catalogue of a sale by auction a lot marked 103 to 109* was included, being various bundles of paper. Item 109* was a bundle which the auctioneer did not intend to be in the catalogue, & he purposed to sell it separately. It was, however, knocked down to plff., & he paid for it, but the auctioneer refused to deliver it to him. The catalogue announced the sale as being "By order of J. S. & others." The buyer brought an action for damages against the auctioneer : - *Held :* the various owners of the lots not being disclosed as the principals, & there being no disclaimer by the auctioneer of personal liability, the auctioneer was personally liable for non-delivery ; & the fact that the buyer accidentally learned of the ownership of lot 109* was not material. PAGE *v.* SULLY (1918), 63 Sol. Jo. 55, D. C.

307. *Add. Annotation :* **Refd.** Page *v.* Sully (1918), 63 Sol. Jo. 55.

311. *Add. Annotation :* **Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

312a. - -] An auctioneer who sells a chattel on behalf of a principal does not by the mere fact of sale warrant his principal's right to sell. BENTON *v.* CAMPBELL, PARKER & CO., [192 2 K. B. 410 ; 94 L. J. K. B. 881 ; 131 . T. 60 ; 89 J. P. 187 ; 41 T. L. R. 69 Sol. Jo. 812, D. C.

Part IX.—Rights and Liabilities in Relation to Third Parties.

313. *Add. Annotations :* - **Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410. **Mentd.** Page *v.* Sully (1918), 63 Sol. Jo. 55.

324. *Add. Annotation :* - **Mentd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

326. *Add. Annotation :* **Mentd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

329. *Add. Annotations :* **Mentd.** Phillips *v.* Brooks, [1919] 2 K. B. 213 ; Folkes *v.* King, [1923] 1 K. B. 282 ; Lake *v.* Simmons, [1926] . J. K. B. 586

PART VIII. SECT. 2, SUB-SECT. 1.

296 iii. —— - - - -]—Plff. & C. entered into a hire-purchase agreement in respect of a motor car. After making his last payment C. delivered the car to W. to sell at public auction. K. bought the car at an auction conducted by W. :—*Held :* the name of the vendor having been disclosed to the purchaser at the sa W. responsible to the buyer ARCHIBALD *v.* WASHER & CO. & KENNEDY, [1923] N. Z. L. R. 165. - **N.Z.**

BAILMENT.

Part I.—In General.

1. *Add. Annotations :* **Mentd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; Pratt *v.* Patrick, [1924] 1 K. B. 488.

3. *Add. Annotations :* **Mentd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735; *Re* Comptoir Commercial Anversois & Power, [1920] 1 K. B. 868; Lebeaupin *v.* Crispin, [1920] 2 K. B. 714; Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526; Larrinaga *v.* Soc. Franco-des Phosphates De Medulla (1923), 92 L. J. K. B 455; *Re* Wait, [1926] Ch. 962; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298.

6. *Add. Annotation :*—**Refd.** Folkes *v.* King, [1923] 1 K. B. 282.

13. *Add. Annotation :* — **Mentd.** Jefferson *v.* Derbyshire Farmers, [1921] 2 K. B. 281.

17. *Add. Annotation :*—**Mentd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

38. *Add. Annotation :*—**Refd.** Van Oppen *v.* Tredegars (1921), 37 T. L. R. 504

Part II.—Gratuitous Bailment.

43. *Add. Citation :* Palm. 381.
Annotation : **Refd.** Hill *v.* Vaux, 1 Ld. Raym. 227.

46. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

47. *Add. Annotations :* - **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42. **Mentd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; Pratt *v.* Patrick, [1924] 1 K. B. 488.

50. *Add. Annotations :*—**Refd.** The Santa Catharina (1919), 88 L. J. P. 170; The Cairnsmore,

PART I. SECT. 1.

sk. *Person obtaining ... control of goods without* To constitute a bailment it is ... if the bailee, having obtained possession & control of the bailor's goods without the latter's knowledge or consent, afterwards acknowledges to the bailor that he holds them for him, & thereafter retains possession & control for him with his consent.—MAKOWER, McBEATH & Co., PROPRIETARY, LTD. *v.* DAUGETY & Co., LTD., [1921] V. L. R. 365.—**AUS.**

13 i. - — *Licence to occupy floor* ...] —Deft. was owner of a private ... nted to pltf. the right to store his motor car therein. The garage had no dividing partitions or stalls, & no particular space was assigned to pltf. Pltf. was given a key of this garage & was able to enter at any time he saw fit to do so & remove & return his car as he chose:—*Held :* deft. was not bailee of pltf.'s car.—LEESER *v.* JONES, [1920] 47 N. B. R. 318.—**CAN.**

14 i. — - *Goods left at cloak-room— ...sed by committee*] The ... so hired a hall, & tickets were sold. A room was provided for a cloak-room, & a caretaker of this room hired at a remuneration ... by the committee. When resp. ... his numbered ticket ... to the number placed on his coat it was found that another coat had been substituted for his:—*Held :* as ... contract between him ... s regards the members of the committee, any contract they might make was a contract on behalf of the whole body, including resp.—CORBETT *v.* JAMIESON, [1923] N. Z. L. R. 374.—**N.Z.**

al. - - *Delivery of mineral-water* ... branded with their name. The ... of dealing with customers was to invoice the bottles at a deposit rate of two shillings per dozen & when bottles were returned the customers were credited in full. Where bottles were not returned the customers were debited with a charge for them, pltfs. usually accepting half the deposit rate for missing bottles where a deficiency was found to exist :—*Held :* the transaction was in law a bailment in which bare possession of the bottles vested in the borrower, the true ownership remaining in the lender. CANTRELL & COCHRANE *v.* NEESON, [1926] N. 107. - **IR.**

PART I. SECT. 2.

38 ii. - ... *v.* R. ... D. L. R. 21 Exch. C. R. 2 **CAN.**

PART II. SECT. 1, SUB-SECT. 1.

sm. *Timber sold remaining in mill -Warehouse receipt given to -Held :* seller gratuitous bailee for buyer.—FERGUSON *v.* EVER (1918), 43 O. L. R. 190.—**CAN.**

40 iii. - — *Valuables of bathers left with caretaker of bathing-shed.*]—Applts. were sued by resp. for the value of a gold watch & other articles left by resp. in the custody of the caretaker of a bathing-shed conducted by applts. & which were lost, presumably :—*Held :* the fact by under- ... the care of valuables belonging to bathers the use of the bathing-shed was rendered more attractive would ...itute a consideration.—' BOROUGH COUNCIL *v.* BOULTON, [1] N. Z. L. R. 365.—**N.Z.**

PART II. SECT. 1, SUB-SECT.

47 ii. —— ——.]—Pltf. on lea ... a hotel was allowed to leave a locked bag in the baggage room, which was kept locked except when opened for taking luggage in or out. On ... for the bag he found contents had stolen:—*Held :* the hotelkeeper ... a gratuitous bailee & had exercised the ...le care of a prudent man.— ... *v.* CALORI (1921), 29 B. C. R. —**CAN.**

47 iii. —— ——.]— ... WILSON & DOWNER (1922), 67 D. L. R. 410.—**CAN.**

47 iv. —— ——.]—The duty of a gratuitous bailee is to take the same care of the goods deposited with him as a reasonably prudent & careful man might fairly be expected to take of his own property.—MUMFORD *v.* NORTHERN TRUSTS CO., [1924] 2 W. W. R. 745.—**CAN.**

47 v. —— —— *Cloak-room— Of* ...-Bourds of Education are not ... of school children's clothing; they are responsible for its loss or injury only when it is caused by their ...—STEVENSON *v.* TORONTO ... OF EDUCATION (1919), 46 O. L. R. 146; 17 O. W. N. 52.—**CAN.**

47 vi. —— —— —— *club.*]—Resp. sued applts., a club, for the value of a coat which she had left at applts.' cloak-room at the racecourse, & which disappeared from there. Resp. was holder of a ticket for the race meeting, but paid nothing for the deposit of the coat. There were hung on the walls of the waiting-room notices stating that while every care would be taken of deposited articles the club accepted no responsibility for same :—*Held :* there was a want of care on the part of applts. in discharging the duty they had accepted.—WELLINGTON RACING CLUB *v.* SYMONS, [1923] N. Z. L. R. 1.—**N.Z.**

g i. —— ——.]—The exhibiting of a dog at a dog show constitutes a bailment for the benefit of both the exhibitor & the club or assocn. holding the exhibition, & the latter are liable for their own carelessness notwithstanding a provision in the entry form signed by the exhibitor that "it shall be a condition of entry that the club shall not be liable for loss or damage to any exhibit occasioned by fire, accident, condition of structure, or negligence of other exhibitors or of the officials or servants of the club or otherwise."—ANDREW *v.* ... 1 W. W. R. 274.—**CAN.**

The Gunda, [1921] 1 A. C. 439; The Canadia (1922), 127 L. T. 499. **Mentd.** The Bernisse & The Elve, [1920] P. 1; The Oscar II, The Bernisse, The Elve, [1921] P. 173.

50a. —— ——.]—Pltf., who was a member of a residential club, of which defts. were the proprietors, gave the manager certain jewellery to lock up in a safe in the manager's office. The rules provided that "No claim in respect of any property alleged to have been left or lost in the club-house will be entertained, & neither the club nor the proprietors shall be responsible for any article of value so left or lost in the club, but small articles of value may, on application to the secretary, be deposited in the safe, but neither the club nor the proprietors shall be under any liability in respect of such deposits." The jewellery was stolen from the safe by the night porter employed by defts., who before engaging him had obtained references from two persons by whom he had been employed, but apparently had made no inquiry as to his previous career. After the theft it was discovered that he was an old & dangerous criminal:—*Held:* defts. had not used due care in engaging the night porter, & as the above rule did not negative defts.' liability for damage due to their neglect to take such care, they were liable for the loss.—WILLIAMS v. CURZON SYNDICATE, LTD. (1919), 35 T. L. R. 475, C. A.

52 *Add. Annotation:*—**Refd.** Coldman v. Hill, [1919] 1 K. B. 443.

64. *Add. Annotation:*—**Refd.** Coldman v. Hill, [1919] 1 K. B. 443.

65. *Add. Annotation:*—**Refd.** Layton v. General Steam Navigation Co. (1923), 130 L. T. 662.

67. *Add. Annotations:*—**Consd.** Coldman v. Hill, [1919] 1 K. B. 443. **Distd.** City of Baroda (Cargo Owners) v. Hall Line (1926), 42 T. L. R. 717.

70. *Add. Annotations:*—**Refd.** Coldman v. Hill, [1919] 1 K. B. 443; G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742. **Mentd.** Pratt v. Patrick, [1924] 1 K. B. 188.

75. *Add. Annotations:*—**Refd.** Coldman v. Hill, [1919] 1 K. B. 443; Smith v. G. W. Ry. (1920), 37 T. L. R. 117.

89. *Add. Annotation:*—**Mentd.** Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

91. *Add. Annotations:*—**Mentd.** Underwood v. Bank of Liverpool. Underwood v. Barclays Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.

96. *Add. Annotations:* **Refd.** The Empress (1922), 92 L. J. P. 42. **Mentd.** Coldman v. Hill, [1919] 1 K. B. 443; Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451; Pratt v. Patrick, [1924] 1 K. B. 488.

101. *Add. Annotations:* **Mentd.** Banbury v. Bank of Montreal, [1918] A. C. 626; Everett v. Griffiths, [1920] 3 K. B. 163.

106. *Add. Citation:* *sub nom.* ANON., Cary, 9.

108. *Add. Annotations:*—**Mentd.** Coldman v. Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42; Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451; Pratt v. Patrick, [1924] 1 K. B. 488.

110. *Add. Annotation:*—**Mentd.** Musgrove v. Pandelis, [1919] 2 K. B. 43.

118. *Add. Annotation:*—**Refd.** Such v. Jones, [1925] Ch. 235.

122. *Add. Annotation:*—**Mentd.** *Re* Stokes, *Ex p.* Mellish, [1919] 2 K. B. 256.

Part III.—Bailment for Valuable Consideration.

133. *Add. Annotations:*—**Refd.** Coldman v. Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42. **Mentd.** Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451; Pratt v. Patrick, [1924] 1 K. B. 488.

136. *Add. Annotation:*—**Refd.** Coldman v. Hill, [1919] 1 K. B. 443.

137. *Add. Annotations:*—**Refd.** Coldman v. Hill (1918), 88 L. J. K. B. 491; Welden v. Smith, [1924] A. C. 484.

140. *Add. Annotations:* **Consd.** Turner v. Civil Service Supply Assocn., [1920] 1 K. B. 50. **Refd.** Coldman v. Hill, [1919] 1 K. B. 443; The Santa Catharina (1919), 88 L. J. P.

65 iv. —— ——.]—The fact that a chattel has been lost or injured in the hands of a gratuitous bailee raises a *prima facie* presumption against him. That presumption, however, may be rebutted by his proving that he was not to blame for the loss or injury.—MUMFORD v. NORTHERN TRUSTS CO., [1924] 2 W. W. R. 745.—**CAN.**

PART II. SECT. 3.

106 i. *Duties of borrower—Measure of diligence.*]—Where an owner of a motor car leaves it at a garage to be repaired & is given, without charge, a motor therefrom for use in the meantime, he is a bailee from the garage proprietor without reward unless it be that the work of repairing is the consideration for the loan of the car. He is therefore bound to take reasonable care of the car hired, & if it be received by him in good condition & he returns it damaged & fails to give any account of the time, place & manner of the injury, the law will presume that he has been negligent.—BUOT v. KEEL, [1918] 1 W. W. R. 706; 39 D. L. R. 410.—**CAN.**

108 ii. —— —— *Onus to negative* ——.]—Pltf. loaned deft. his engine to be used for hauling a gasoline engine to start same. While being used for hauling a separator over rough ground the crankshaft broke:—*Held:* the *onus* was on deft. to negative negligence on his part, &, not having discharged this *onus*, he was liable in damages.—SMITH v. MOATS, [1921] 1 W. W. R. 268; 56 D. L. R. 415; 14 Sask. L. R. 37.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

133 ii. —— *Not liable for theft—car left at garage—Garage* ——.]—FOURNIER v. MCKENNA (No. 1), 57 D. L. R. 725; 54 N. S. R. 479.—**CAN.**

135 ii. —— ——.]—A restaurant keeper who invites customers to deposit articles of clothing temporarily in a place provided by him for that purpose is a bailee for hire & not a gratuitous [illegible]. It is part of [illegible] tion for which the keeper of [illegible] rest[illegible] recompe[illegible] from [illegible]. The bailee [illegible] a [illegible] e in caring for the [illegible] to him & is liable in [illegible] of failure to do so.—MURPHY v. HART (1919), 52 N. S. R. 79.—**CAN.**

[illegible] *for* [illegible] car was [illegible] arage proprietors for [illegible] custody over night. During the night the night watchman in charge of the garage took the car out for his own purposes, contrary to his express instructions & without their [illegible] the night watchman the car [illegible] with another car & was damaged:—*Held:* as the defenders had delegated their duty of keeping the car safely secured in the garage to their servant, they were liable to pursuers for [illegible] servant's failure in [illegible] CENTRAL MOTORS, [illegible] CESSNOCK GARAGE [illegible] Motor Co., S. C. 796.—**SCOT.**

170; Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475; Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426; Reynolds *v.* Boston Deep Sea Fishing & Ice Co. (1921), 38 T. L. R. 22; Rutter *v.* Palmer, [1922] 2 K. B. 87; Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185. **Mentd.** Diamond Alkali Export Corpn. *v.* Bourgeois, [1921] 3 K. B. 443; Wasserman *v.* Blackburn (1926), 43 T. L. R. 95.

141. *Add. Annotation:* **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

142. *Add. Annotation:* **Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662.

144. *Add. Annotations:* **Consd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662. **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Santa Catharina (1919), 88 L. J. P. 170; Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475; Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50. **Mentd.** Diamond Alkali Export Corpn. *v.* Bourgeois, [1921] 3 K. B. 443; Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426; Reynolds *v.* Boston Deep Sea Fishing & Ice Co. (1921), 38 T. L. R. 22; Rutter *v.* Palmer, [1922] 2 K. B. 87; Wasserman *v.* Blackburn (1926), 43 T. L. R. 95.

145. *Add. Annotation:* **Consd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

146. *Add. Annotation:* **Mentd.** Ryc *v.* Purcell, [1926] 1 K. B. 146

159. *Add. Citation:* 88 L. J. K. B. 55.

Annotations: **Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110; *Re* Polemis & Furness, Withy, [1921] 3 K. B. 560; Jones *v.*

163. **Consd.** *v.* Ry., [1921] 2 K. B. 426. **Apld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646. **Refd.** The Cap Palos, [1921] P. 458; L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263; The Refrigerant, [1925] P. 130.

163a. — **Evidence of negligence—Failure to examine goods periodically.**]—Resps.' wheat was stored at applts.' warehouse, which was allowed to become congested with grain of various kinds, including maize, which had a special tendency to heat, & applts. were in consequence unable to fulfil the obligation they were under to resps. to execute their orders to turn & cool as expeditiously as they were bound to do. Resps.' wheat was moist, & there was evidence that even a small rise in the surrounding temperature might, unless it was expeditiously turned, cause it to heat:—*Held:* applts. were liable.—LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD. *v.* CHARLTON & BAGSHAW (1918), 146 L. T. Jo. 20, H. L.

164. *Add. Annotation:* **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

168. *Add. Annotation:* **Mentd.** Reader *v.* S. E. & C. Ry. & L. & N. W. Ry., Van Den Berghs *v.* G. W. Ry. (1921), 38 T. L. R. 14.

171. *Add. Annotations:* **Consd.** Engel *v.* Lancashire & General Assce. (1925), 41 T. L. R. 408. **Mentd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

184. *Add. Annotation:*—**Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

190. **For "Company not responsible for package over £10," read "Company not responsible for package over stated value."**

Add. Annotation:—**Refd.** Gibaud *v.* G. E. Ry (1921), 125 L. T. 76.

192. *Add. Annotation:*—**Consd.** Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426.

141 iv. W
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the same legal obligations such a
e, is sued for the loss of ds, the
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of
able on the part of deft. or his
: is upon deft. MAKOWER & Co., PROPRIETARY, LTD
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V. L. R. 365.- **AUS.**

141 v. .] The burden is pltf. in the first instance to establish nce, but where the loss is ed or the goods are not l, a sufficient case is raised the bailee to put him upon his The law in such case pre- negligence to be the cause of the loss or non-return. Where there is no explanation of the cause of loss & deft. fails to meet the *prima facie* case against him he will be held liable for the consequences of his neglect.- MURPHY *v.* HART (1919), 52 N. S. R. 39 - **CAN.**

PART III. SECT. 1, SUB-SECT. 2.

181 vi. now i.

Plff.
placed apples in the cool st of
The apples were in good
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al months lat the apples
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fit for the into
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of

the store by efficient means, & to store the apples in such manner as would ensure access of the cold air to the fruit: & as fruit was liable to be
perform any of these duties, &
become affected at any time, it was the duty of deft. to inspect the fruit in the store at reasonable times, &, if indications of deterioration were observed, to notify pltfs., &, if nece practicable, to take steps to the goods from further AURORA TRADING CO., LTD. & JACKSON *v.* NELSON FREEZING CO., LTD., [1922] N. Z. L. R. 662.- **N.Z.**

163a iv. — — — — *Failure to inspect premises - Defective wharf.*]—*Held:* the collapse of the wharf was due to failure of worm-eaten piles supporting it, & such defect should have been known if proper diligence had been used in inspection.- FURNESS WITHY CO., LTD. *v.* ARLIN (1918), 42 D. L. R. 97. - **CAN.**

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172 i. — — .] -Pltf delivered to defts., a warehouse co., for storage. The warehouse contract provided that the responsibility of the co. "for the nts of any piece or package is to the sum of $50, unless the herof is made known at the time of storage & receipted for in the : an additional charge will be made for higher valuation." The goods, which were in several packages, were stored without a declaration of value & without any additional charge for a higher valuation. Through the negligence of defts.' servants, the goods were included in a shipment of other ls & sent to England. Some of 's goods were lost, & others d:—*Held:* the amount which pltf. was entitled to recover was limited by the clause of the warehouse contract.—MAUNSELL *v.* CAMPBELL SECURITY FIREPROOF STORAGE & MOVING CO., LTD., [1921] 2 W. W. R. 348; [1921] 2 W. W. R. 579.—**CAN.**

172 iii. — — .]—A cold storage co. gave a receipt for hops stored with them which bore, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for any damage whatsoever. . . . All goods are received subject to the conditions on the back of this receipt." The first condition on the back was, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for loss or damage to goods stored through maintaining too high or too low a temperature in the stores, failure of machinery, buildings or plant ire, or any other cause whatsoever other than theft": —*Held:* the contract meant that defenders promised to do their utmost to take care of the hops, but that, if their efforts were unsuccessful for any cause other than theft, they were not to be liable in damages.—BALLINGALL & SON *v.* DUNDEE ICE & COLD STORAGE CO., [1924] S. C.

192a. —— Loss of luggage left outside cloak-room.]—A condition in a railway cloak-room ticket purporting to exempt the railway co. from responsibility for articles above a specified value deposited in the cloak-room except on certain terms, & assented to by the person taking the ticket, is not prevented from being part of the contract & from protecting the co. merely because it is unreasonable, provided that it be not so extravagant as to imply, & there is no other evidence to show, that that person's assent to it has been obtained by fraud, or so irrelevant as to be foreign to the contract.

Pltf. took his bicycle to the cloak-room at a station of deft. co. for the purpose of depositing it there, paid to the official the charge demanded, & received a ticket purporting to be a cloak-room ticket upon the face of which was legibly printed the following condition: "The co. will not be in any way responsible in respect of any article deposited the value whereof exceeds £5, unless at the time of deposit the true value & nature of the article shall have been declared, & 1*d.* per £1 sterling of the declared value be paid for each day or part of a day in addition to the ordinary cloak-room charges." The value of the bicycle exceeded £5, but pltf. made no declaration of value or additional payment. The bicycle was standing at the open door of the cloak-room, but the official told pltf. to leave it there as he would put it away. When pltf. returned to claim the bicycle it could not be found. In an action by pltf. against defts. for the value of the bicycle defts. relied upon the above condition. It was found in effect that pltf. knew that there was printing on the ticket, that he believed it contained a condition, & that defts. had done sufficient to give pltf. notice of the condition; & it was not found & there was no evidence to show that pltf.'s assent to the condition had been obtained by fraud. It was further found that owing to the negligence of the official in leaving the bicycle at the door of the cloak-room it had been stolen: *Held*: (1) assuming that the condition was unreasonable which, *semble*, it was not, defts. were not, merely on that ground, prevented from relying upon it, inasmuch as it was not so extravagant as to imply that pltf.'s assent to it had been obtained by fraud, or so irrevelant as to be foreign to the contract; (2) defts. were protected by the condition, although the bicycle had not been deposited within the cloak-room; (3) on the above facts & findings judgment should be entered for defts.—GIBAUD *v.* GREAT EASTERN RY. Co., [1921] 2 K. B. 426; 90 L. J. K. B. 535; 125 L. T. 76; 37 T. L. R. 122; 65 Sol. Jo. 454, C. A.

Annotations:—As to (2) **Consd.** L. & N. W. Ry. *v.* Nelson, [1922] 2 A. C. 263. **Refd.** Armour *v.* Walford (London), [1921] 3 K. B. 473; The Cap Palos, [1921] P. 458; Nunan *v.* Southern Ry. (1923), 130 L. T. 131; Burger *v.* Cunard S. S. Co., [1925] 2 K. B. 616; The Refrigerant, [1925] P. 130.

194. *Add. Annotation:*—**Consd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

197. *Add. Annotations:*—**Consd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76. **Apld.** Ehinger *v.* S. E. & C. Ry. & The Pullman Car Co. (1922), 38 T. L. R. 678; Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305. **Mentd.** Nunan *v.* Southern Ry. (1923), 130 L. T. 131.

198. *Add. Annotations:* **Refd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76. **Mentd.** Walls *v.* Centaur Co. (1921), 126 L. T. 242; Nunan *v.* Southern Ry. (1923), 130 L. T. 131.

199. *Add. Annotations:* **Mentd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; Pratt *v.* Patrick, [1924] 1 K. B. 188.

201. *Add. Annotation:* **Mentd.** Brightman *v.* Tate, [1919] 1 K. B. 463.

207. *Add. Annotation:* *As to* (2) **Refd.** Franco British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

211. *Add. Annotation:* **Refd.** Geddling *v.* Marsh,

212. *Add. Annotation:* **Apld.** Point Anne Quarries *v.* The M. F. Whalen (1922), 39 T. L. R. 37.

215. *Add. Annotation:* **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

216a. Duty to keep in repair.] Where a person hires a specific thing for the purpose of using it, there is an implied contract on the part of the letter that he will in the meantime keep the thing, as I should say, in repair, that is, he will not by want of reasonable care after the contract is made allow it to become worse than it was at the time the contract was made (BRETT, L.J.). ROBERTSON *v.* AMAZON TUG & LIGHTERAGE CO. (1881), as reported in 7 Q. B. D., at p. 606, C. A.

Annotations: **Refd.** The West Cock, [1914] P. 208; The Glenmorven, [1913] P. 111. **Mentd.** Point Anne Quarries *v.* The M. F. Whalen (1922), 39 T. L. R. 37.

218. *Add. Annotations:* **Folld.** Mintz *v.* S (1920), 36 T. L. R. 399. **Refd.** Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 175.

219. *Add. Annotations:* **Mentd.** Coldman *v.* Hill [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42; Ellis' Trustee *v.* Dixon Johnson, [1924] 2 Ch. 451; Pratt *v.* Patrick, [1924] 1 K. B. 188.

224. For the existing paragraph substitute as follows: **Obligation to keep in repair Agreement for redelivery in good working order.**] SCHRODER *v.* WARD, No. 237, *post*.

226. *Add. Annotations:* **Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526; Russell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298. **Mentd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735; *Re* Comptoir Commercial Anversois & Power, [1920] 1 K. B. 868; Lebeaupin *v.* Crispin, [1920] 2 K. B. 714; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455; *Re* Watt, 1926 Ch. 962.

227. *Add. Annotations:* **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42. **Mentd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; Pratt *v.* Patrick, [1924] 1 K. B. 488.

240. *Add.* **Mentd.** *v.* Peterson;

241. *Add. Annotation :* —**Mentd.** British Ry. Traffic & Electric Co. *v.* C. R. C. Co. & L. C. C., [1922] 2 K. B. 260.

245. *Add. Annotations :* **Consd.** Lewis *v.* Thomas, [1919] 1 K. B. 319. **Mentd.** British Ry. Traffic & Electric Co. *v.* C. R. C. Co. & L. C. C., [1922] 2 K. B. 260; Lamb *v.* Wright, [1924] 1 K. B. 857.

247. *Add. Annotation :* **Mentd.** British Ry. Traffic & Electric Co. *v.* C. R. C. Co. & L. C. C., [1922] 2 K. B. 260.

252. *Add. Annotation :* **Mentd.** Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132.

252a. **Delivery—Refusal of hirer to take delivery—Remedy of owner.**]—Under a hire-purchase agreement deft. agreed to hire from pltfs. a cash register for ten months certain at an agreed monthly rental payable in advance with an option to purchase on payment of a fixed sum within one month after payment of all the rent for the agreed period of hiring. Deft. in breach of his contract refused to accept delivery of the register. Pltfs. issued a default summons in the county ct. for rent accrued due up to the date of the summons: —*Held:* no actual debt had been incurred & the action was not maintainable, pltfs.' remedy in damages only.—NATIONAL CASH REGISTER Co. *v.* STANLEY, [1921] 3 K. B. 292; L. J. K. B. 1220; 125 L. T. 37 T. L. R. 776; 65 Sol

254. *Annotation :* **Mentd.** Motor Works, [1923] 1 K. B. 127.

255. *notation :* **Mentd.** Pennington *v.* Motor Works, [1923] 1 K. B. 127.

Add. Annotation : **Mentd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

262. *Add. Citation :* 119 L. T. 632.

: *As to* (1) **Consd.** Nel Murdoch *v.* Wood (1922), 126 L. T. 745. *As to* (2) **Apld.** Cohen *v.* Roche, [1927] 1 K. B. 169.

262a. —— —— ——.]—Pltfs. let a piano on a hire-purchase agreement which provided that until all the instalments were paid the hirer should have no property in the goods otherwise than as hirer, & that in case of any breach of the agreement pltfs. might, without any formal notice, put an end to the hiring & retake possession of the piano, & that the hirer should keep the piano in his own custody. At a date when the hirer had paid all the instalments then due, but before he had paid the total price, he sold the piano to deft., who *bonâ fide* believed that the hirer was the absolute owner. The hirer having subsequently got the piano back into his own possession & having again disposed of it, but having, in the meantime, kept up the payment of the instalments, pltfs., on ascertaining the facts, claimed damages from deft. for conversion: —*Held:* the sale by the hirer to deft. was not *ipso facto* a repudiation of the hire-purchase agreement, as pltfs. had never accepted the repudiation, but it transferred whatever interest the hirer had at the time of the sale, & as pltfs. were not entitled to the possession of the piano until they elected to put an end to the agreement there was no conversion by deft.—NELSON MURDOCH & Co. *v.* WOOD (1921), 126 L. T. 745; 38 T. L. R. 23; 66 Sol. Jo. (W. R.) 6 D. C.; *revsd.* on other grounds (1922), 38 T. L. R. 393, C. A.

264. After "the owner can maintain an action for conversion against the purchaser" add ", as the hirer has not 'agreed to buy' the goods within Factors Act, 1889 (c. 45), s. 9."

267. *Add. Annotation :* —**Mentd.** British Ry. Traffic & Electric Co. *v.* C. R. C. Co. & L. C. C., [1922] 2 K. B. 260.

Part IV.—Considerations Common to all Classes of Bailment.

278. *Add. Annotations :* —**Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298. **Mentd.** *Re* Wait, [1926] Ch. 962.

280. *Add. Annotations :* **Consd.** Kempler *v.* Brav- 925), 133 L. T. 680. **Refd.** *v.* 1926), 95 L. J. K. B. 5

285. *Add. Annotation :* —**Refd.** Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte de Mulhouse (1924), 93 L. J. K. B. 1098.

296. *Add. Annotations :*—**Distd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223; Wait & s *v.* Midland Bank (1926), 31 Com. Cas.

PART III. SECT. 3, SUB-SECT. 1.

241 vi. · · · ·.] · Pltf. handed over

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of were as follows: — " I
al to sell to you on the

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the lorries

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pose of any lorries until the full has been paid & [pltf.] or the right to seize the

to be paid as he payment of y given to yo

Rs.,000 I

delivery of all the nine lorries, & also a letter addressed to the Commissioner of Police to transfer the lorries to your name": — *Held:* the agreement was an agreement for sale.—COLE *v.* NANALAL MOHANJI DAVE (1924), I. L. R. 49 Bom. 172. — **IND.**

PART III. SECT. 3, SUB-SECT. 2.

264 *v.* —— ——.]— Pltf. & C. entered into a hire-purchase agreement in the usual form in respect of a motor car. After making his first payment C. delivered the car to deft. W. to sell. Deft. K. bought the car at an auction conducted by W.:—*Held:* both defts. —— liable to pltf.— ——— *v.* & Co. & KIN L. R. 165.— **N.Z.**

PART III. SECT. 4.

firm of upholsterers who had contracted to remove, beat, & relay a carpet, were not liable for its accidental destruction while in the premises of a firm of carpet-beaters with whom they had sub-contracted to beat it, there being no *delectus personæ* in such a contract as to bar them from employing a sub-contractor, & no negligence in the selection of the sub-contractor.—STEVENSON & SONS *v.* MAULE [1920] S. C. 333; 57 Sc. L. R. **SCOT.**

PART IV. SECT. 1, SUB-SECT. 1.

275 ii. ——.]—The law imposes an obligation upon a bailee to restore the to the bailor, subject to this, that the bailee is excused from restoring it if his inability to do so is due to no want of reasonable care on his part.—PATERSON *v.* MILLER, V. L. R. 36.—

172. **Mentd.** Sterns *v.* Vickers, [1923] 1 K. B. 78.

298. *Add. Annotation :*—**Mentd.** L. & Y. Ry., L. & N W. Ry. & Graeser *v.* MacNicoll (1918), 88 L. J. K. B. 601.

299. *Add. Annotation :*—**Consd.** Laurie & Morewood *v.* Dudin (1925), 134 L. T. 309.

300. *Add. Annotations :*—**Consd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223. **Mentd.** Colley *v.* Overseas Exporters, [1921] 3 K. B. 302.

304a. ——.]—Defts., warehousemen, held 618 quarters of maize belonging to A., who sold 200 quarters thereof to W., who sold them to pltfs., giving to the latter a delivery order which they lodged with defts. Defts. did not object to the order, nor did they make any acknowledgment to pltfs. of their title :—*Held :* the mere receipt of the delivery order by defts. without objection did not estop them from denying that pltfs. were the owners of the 200 quarters.—LAURIE & MOREWOOD *v.* DUDIN & SONS, [1926] 1 K. B. 223 ; 95 L. J. K. B. 191 ; 134 L. T. 309 ; 42 T. L. R. 149 ; 31 Com. Cas. 96, C. A.

Annotations :—**Consd.** Wait & James *v.* Midland Bank (1926), 31 Com. Cas. 172. **Refd.** *Re* Wait, [1926] Ch. 962

304b. ——. — WAIT & JAMES *v.* MIDLAND BANK (1926), 31 Com. Cas. 172.

306. *Add. Annotation :*—**Consd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

309. *Add. Annotations :*—**Apld.** The Joannis Vatis, [1922] P. 92. **Refd.** The Rosalind (1920), 90 L. J. P. 126. **Mentd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127 ; G. N. Ry. *v.* L. E. P. Transport Depository, [1922] 2 K. B. 742 ; The Zelo, [1922] P. 9 ; Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

312. *Add. Annotations :* **Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586. **Mentd.** Williams *v.* Baltic Insce. Assocn. of London, [1924] 2 K. B. 282.

313. *Add. Annotation :* **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

317. *Add. Annotation :*—**Refd.** Whiteley *v.* Hilt, [1918] 2 K. B. 808.

319a. Completion of work—Goods sent to tradesman for work to be done.]—Where goods are sent to a tradesman to exercise his skill upon them, his duties as bailee do not cease as soon as his work is done. Until the parties have shown, either by express words or by conduct, that they intend to alter the original relationship between them, that relationship continues.—MITCHELL *v.* DAVIS (1920), 37 T. L. R. 68.

322. *Add. Annotation :*—**Refd.** Whiteley *v.* Hilt, [1918] 2 K. B. 808.

324. *Add. Annotation :*—**Mentd.** Belvedere Fish Guano Co. *v.* Rainham Chemical Works, Feldman & Partridge, Coope *v.* Same, [1920] 2 K. B. 487.

325. *Add. Citation :*—119 L. T. 632.
Add. Annotations :—**Consd.** Nelson Murdoch *v.* Wood (1922), 126 L. T. 745. **Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

336. *Add. Annotations :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Refd.** City of Baroda (Cargo Owners) *v.* Hall Line (1926), 42 T. L. R. 717.

338. *Add. Annotation :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

339a. Right of sale—On non-payment of charges—Storage of goods.]—Defts., a firm of warehousemen, received a quantity of furniture from pltf. to be stored by them at an agreed rental. An express condition of the contract stipulated that if the rent or other charges due to defts. should be two years in arrear defts., on giving proper notice in the terms of the contract to pltf., should be entitled to sell the whole or any part of the goods & pay themselves out of the proceeds : *Held :* defts. were entitled to sell the whole of the goods, & it was not unreasonable that they should do so, & they had done nothing actionable in selling. WILLETTS *v.* CHAPLIN & CO. (1923), 39 T. L. R. 222.

340. *Add. Annotation :* **Apld.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 880.

357. *Add. Annotations :* **Apld.** The Joannis Vatis, [1922] P. 92. **Refd.** The Rosalind (1920), 90 L. J. P. 126. **Mentd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127 ; G. N. Ry. *v.* L. E. P. Transport Depository, [1922] 2 K. B. 742 ; The Zelo, [1922] P. 9 ; Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 315.

371. *Add. Annotation :* **Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

372. *Add. Annotation :* **Refd.** The Joannis Vatis (1921), 15 Asp. M. L. C. 506.

373. *Add. Annotations :* **Consd.** The Rosalind (1920), 90 L. J. P. 126. **Apld.** The Joannis Vatis, [1922] P. 92 ; The Zelo, [1922] P. 9. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127. **Mentd.** G. N Ry. *v.* L. E. P. Transport Depository, [1922] 2 K. B. 742 ; Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 315.

374a. ——— — With interest from date of loss.] While on hire by the Admlty. a steam trawler was sunk through a collision with the *R.* the value of the trawler was agreed between the parties, but the Admlty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the *R.* contended that interest was only payable from the date when the Admlty. paid the value of the trawler to

PART IV. SECT. 1, SUB-SECT. 7.

316 ll. —— ——.]—S. sold certain to D. Under the contract of e, on a fixed date, a ocunt & *pro formâ* delivery was to be given, & delivery was to be taken only payment in cash of the full of the purchase-money & not before. Until such payment in cash, or until all cheques, etc., given in payment were met & satisfied, the g were to remain the sole & absoproperty of S. During the period y &

payment the are to be in charge of D. D. sold payment to S. in ce with the terms of the al not been made :—*Held* under the terms of the n SCOTTON *v.* 19 N. S. W. L. R. 70.—

PART IV. SECT. 2, SUB-SECT. 1.

354 lll. —— —— *Joint of bailee & third party*.]—A. entrusted his motor car to C. for repairs. While the car was being tested by C. it into collision with a lorry to B. In an action for brought by A. against B., the jury found that the driver of the lorry had driven at an excessive speed, & that the of the of identification of bailor & in rela

LTD., [1921] 2 I. R. 274.— IR.

her owners: *Held:* under the Admlty. rule a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date; but inasmuch as there was an agreement between the parties that defts. should pay what the Admlty. had to pay to the owners of the trawler, interest on the payment only ran from the date of payment.—THE ROSALIND (1920), 90 L. J. P. 126; 37 T. L. R. 116.

379. *Add. Annotations:*—**Apld.** The Zelo, [1922] P. 9. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127; Wilston S.S. Co. *v.* Andrew Weir (1925), 31 Com. Cas. 111.

392. *Add. Annotation:*— **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

PART IV. SECT. 2, SUB-SECT. 2.

376 h. *Proceeds of sale paid to fictitious owner.*] The owner of furniture entrusted it to pltf. for storage. Pltf. was fraudulently induced to send ire for sale by deft., who was to account to the owner for it. Deft sold the furniture & paid the purchase-money to the person who had falsely represented himself to be the owner: *Held:* pltf. could not maintain an action against deft. either for conversion or for money had & received.—GRACE BROTHERS, LTD. *v.* LAWSON (1922), 31 C. L. R. 130.—**AUS.**

BANKERS AND BANKING.

Part I.—Constitution and General Position of Banks.

23. *Add. Annotation :*—**Mentd.** Edwards *v.* Porter, | McNeall *v.* Hawes, [1923] 2 K. B. 538.

Court of Chancery Act, 1841 (c. 5), s. 4.]—CHAMBERLAIN & SPROAT *v.* WALL & LLOYD (1920), 150 L. T. Jo. 387.

40. *Add. Annotation :*—**Mentd.** Esquimault & Nanaimo Ry. *v.* Wilson, [1920] A. C. 358.

57. *Add. Annotation :*—**Mentd.** Bowling *v.* Camp (1922), 128 L. T. 342.

61. *Add. Annotation :*—**Mentd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321.

73. *Add. Annotation :*—**Mentd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

75. *Add. Annotation :*—**Mentd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

98. *Add. Annotation :*—**Consd.** Bailey *v.* Bailey, [1926] Ch. 758.

106. *Citations :*—For "3 L. T. M. C. 84" read "3 L. J. M. C. 81."

112a. **"Dispute"—Conflicting claims to deposit—Jurisdiction of Registrar of Friendly Societies.**]—*Held :* (1) the words "any person claiming to be entitled to any money deposited in such savings bank" in Savings Bank Act, 1844 (c. 83), s. 14, were not limited to persons claiming through a depositor; (2) a dispute between a depositor & a person claiming adversely to him was a dispute within the sect.; (3) the Registrar of Friendly Societies now has jurisdiction over disputes between rival claimants to a deposit.—BAILEY *v.* BAILEY, [1926] Ch. 758; 95 L. J. Ch. 470, 135 L. T. 431; 42 T. L. R. 502, C. A.

128. *Add. Annotation :*—**Mentd.** Evans *v.* Brunner, Mond, [1921] 1 Ch. 359.

128a. —— **To act as sole judicial trustee with remuneration.**]—A bank may be appointed a sole judicial trustee, with remuneration, under the sect. dealing with the appointment of "a person" under Judicial Trustee Act, 1896 (c. 35).—*Re* COHEN, COHEN *v.* COHEN (1918), 62 Sol. Jo. 682.

156. *Add. Citation :* -*sub nom.* BANK OF AUSTRALASIA *v.* BANK OF AUSTRALIA, 12 Jur. 189.

157. *Add. Annotations :* **Mentd.** Atherton *v.* British Insulated & Helsby Cables, [1925] 1 K. B. 421; *Re* City Equitable Fire Insce.,

159. *Add. Citation :* -18 Jur. 885.

166. *Add. Annotation :* **Refd.** Wright *v.* Morgan, [1926] A. C. 788.

169. *Add. Annotations :* **Consd.** Atherton *v.* British Insulated & Helsby Cables, [1925] 1 K. B. 421. **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

203. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

231. *Add. Annotations :* As *to* (1) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321. *Generally*, **Mentd.** Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132; Boston Corpn. *v.* Fenwick (1923), 129 L. T. 766; Holt *v.* Markham, [1923] 1 K. B. 504; Cantiere San Rocco, S.A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Bowling *v.* Cox, [1926] A. C. 751.

237. *Add. Annotation :* **Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

238. *Add. Annotations :* —**Mentd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Prager *v.* Blatspiel, Stamp & Heacock, [1921] 1 K. B. 566.

239. *Add. Annotations :* - *Generally*, **Mentd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244.

247. *Add. Annotation :* **Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

PART I. SECT. 6.

t. [now "112a I."

PART I. SECT. 7, SUB-SECT. 3.

y i. —— ——.]—R. *v.* BARNARD (1925), 44 Can. Crim. Cas. 137; 57 O. L. R. 397.—**CAN.**

y ii. —— ——.]—R. *v.* SMITH (1925), 44 Can. Cr O. L. R. 383.—**CAN.**

y iii. —— ——.]—R. *v.* GOUGH 1925), 44 Can. Crim. Cas. 122; 57 O. L. R. 426.—**CAN.**

PART I. SECT. 7, SUB-SECT. 4.—B.

214 ix. —— *By administrator to next of kin.*]—CLARKSON *v.* MCLEAN (1918), 42 O. L. R. 1; 13 O. W. N.

PART I. SECT. 7, SUB-SECT. 5.

x i. *Pensions fund society—Right of ers to fund.*]—Where the merger or winding up of a bank constitutes a cessation of a fund society has in accordance with Pension Fund Act, R. S. C., ex-members & pensioners rank for distribution of the funds of the society

ing to the bye-laws of the society regardless of the general law unless the bye-laws make no provision for the case in question.—*Re* SOCIETE DE LA CAISSE DE RETRAITE DE LA BANQUE NATIONALE, TRUDEL *v.* LEMOINE, [1925] 4 D. L. R. 97; [1925] S. C. R. 698.—**CAN.**

j i. - - *Debt to party liable as surety.*] In the winding up of a a person liable to the bank as may set off his personal right against the bank as a depositor, where both debts exist at the time of the winding up.—CLARKSON *v.* ROBINET, [1925] 1 D. L. R. 775; *aff'g*, 26 O. W. N. 466.—**CAN.**

223 i. *Liab to contribute - Trus- not* the will was sufficiently in the books of the bank with the actual holding. *Re* HOME BANK OF CANADA, NATIONAL TRUST Co.'s CASE (1925), 57 O. L. R. 27; 5 C. B. R. 614; *affg.* 5 C. B. R. 315.—**CAN.**

PART I. SECT. 10, SUB-SECT. 1.

bank as party.]
a bank has authority to give the con-

sent in writing required by Rules of Ct., r. 41, for the adding of a plff.—KUECH *v.* PEAT, [1922] 2 W. W. R. 171; 63 D. L. R. 408; 15 Sask. L. R. 321.—**CAN.**

I (p. 169) i. - - .] The local manager of a bank, in answer to the inquiry of a customer, informed him that a cheque held by the customer indorsed the cheque & left it with the manager to be applied against his debt to the bank, A. relying on such assurance, permitted his

bank was estopped from denying that the customer paid to the amount represented by the cheque. HAMPTON *v.* TORONTO BANK, [1924] 2 W. W. R. 417.—**CAN.**

I. *Guaranteeing repayment Made by third party to customer.*]

authority of a local a bank.—STEVENS *v.* MERCHANTS BANK OF CANADA, [1926] 1 W. W. R. 2; 42 D. L. R. 526, 30 Man. L. R.

Delivery up of keys

254. *Add. Annotations :—Generally*, **Mentd.** Calmenson *v.* Merchants' Warehousing Co. (1920), 125 L. T. 129; Dey *v.* Mayo, [1920] 2 K. B. 340; Everett *v.* Griffiths, [1921] 1 A. C. 631; Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305.

263. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

Part II.—Business of Banking.

264. *Add. Citation :—sub nom.* BANK OF AUSTRALASIA *v.* BANK OF AUSTRALIA, 12 Jur. 189.

270. *Add. Annotation :*—**Mentd.** Ipswich Permanent Money Club *v.* Arthy, [1920] 2 Ch. 257.

272. *Add. Annotations :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Reld.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777. **Mentd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423.

274. *Add. Annotation :*—**Consd.** *Re* Farrow's Bank, [1923] 1 Ch. 41.

274a. —— **Bank stopping payment before final clearance of cheque received for collection.**]—*Re* FARROW'S BANK, LTD., No. 479a, *post*.

275. *Add. Annotation :*—**Reld.** Garrard *v.* James, [1925] Ch. 616.

276. *Add. Annotation :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

278. *Add. Annotation :*—**Mentd.** Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.

279. *Add. Annotation :*—**Mentd.** The Tervaete, [1922] P. 259.

281. *Add. Annotations :*—**Mentd.** Quebec Ry. Light, Heat & Power Co. *v.* Vandry, [1920] A. C. 662; McDonald *v.* Nash, [1924] A. C. 625; Samuel *v.* Dumas, [1924] A. C. 431; Ouellette *v.* Canadian Pacific Ry., [1925] A. C. 569.

282. *Add. Annotations :*—**Apld.** British American Continental Bank *v.* British Bank for Foreign Trade, [1920] 1 K. B. 328. **Reld.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452; Jones *v.* & Gillow, [1926] A. C. 670. **Mentd.**

282a. **Account opened in assumed name—Payment in of cheque obtained by duress—Payment out on forged cheques—Action by party whose name assumed.**]—Pltf. brought an action against deft. bank for £125,000, money had & received by defts. to his use. Pltf.'s case was that an account was opened in his name at a branch of deft. bank by some one other than himself, that a cheque for £150,000 payable to his order was paid into the account, & that on the following day a forged cheque, purporting to be drawn by pltf., for £130,000 was cashed by one H., the balance being afterwards withdrawn by H., by means of other forged cheques. Defts. alleged that the cheque for £150,000 was obtained by a blackmailing conspiracy from one A., who was discovered by one N. with pltf.'s wife in compromising circumstances, & that the proceeds were shared between the conspirators, whom defts. alleged to include, among others, pltf., pltf.'s wife, & H. & N. Pltf. & his wife denied that they took part in any conspiracy, & pltf. said that, when he heard of the relations between his wife & A., he instructed H., who represented himself to be a solr., to take divorce proceedings, & that, when the sum of £25,000 was handed to him by H., he, pltf., passed the amount on to his wife & said that he would have nothing more to do with her, & that he learned later that A. had paid £150,000. It was to recover the difference between these two amounts that the action was brought. The jury found that there was a conspiracy to get money from A. by catching him with 's wife, but that pltf. & his wife were not

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to assign to
of the premises upon which the was carried on. Pltf. sent of the premises to deft. C., of a branch of deft. bank, in letter, in which he requested C. to he keys to W., one of the rs, upon receiving from W. a for a

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handed them to W.:—
had failed to carry out the terms of his instruc
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he had not satisfied it.—GARNER *v.* UNION BANK OF CANADA (1919), O. L. R. 129; 17 O. W. N. 16.—CAN.

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apply where they are founded on in defence.—UNION BANK OF SCOTLAND *v.* TAYLOR, [1925] S. C. 835.—SCOT.

]—*Held:* as the promise by the g manager to forward the draft was a voluntary act without tion & not part of his duty as an of the bank, the bank was not liable for his failure in performing it.—MAXWELL *v.* UNION BANK OF CANADA, [1923] 1 W. W. R. 7; 69 D. L. R. 130.—CAN.

PART II. SECT. 1, SUB-SECT. 2.

275 va. —— —— ——.]—A deposit of money in a bank to meet a draft is not payment of the draft. The

priated by the depositor to draft. Where the bank is

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it is to carry out its as

It is possible for a bank while as agent of the drawer of a draft for the purpose of collecting it to act as agent of

money.—BRANTFORD CORDAGE *v.* MILNE, [1925] 1 D. L. R. 862; 1 W. W. R. 911; 35 Man. L. R. 17; *affg.*, [1925] 1 D. L. R. 92; [1925] 1 W. W. R. 442.—CAN.

275 vii. —— —— *In Canadian paper in American bank—In what currency payable by bank.*]—*Held:* pltf.'s deposits created merely the relation of debtor & creditor, & the bank's obligation under that relationship was to the exact amount of money on of de in Canadian or American currency discussed.—SHEPPARD *v.* FIRST NATIONAL BANK OF SWEET (1924) 1 D. L. R. 582; 1 W. W. R. 290.—CAN.

275 viii. —— —— *Cheque to bank to be cashed.*]—The fact the holder of a cheque delivers it to a bank to be cashed does not constitute a deposit nor render the bank his debtor, & the bank has no right to off against the proceeds of the a debt owing to it by the *v.* ROYAL BANK OF 3 W. W. R. 791; 11 Sask. L. R.

parties to the conspiracy, that A. was induced to part with the money through fear, & that his parting with it was not free & voluntary :—*Held :* pltf. never got the property in the cheque for £150,000 & could not sue in conversion, & he had no right to sue in contract because the dealings with deft. bank were not on his behalf, & therefore he had no title to the cheque, & the action failed.—ROBINSON *v.* MIDLAND BANK, LTD. (1925), 41 T. L. R. 402 ; 69 Sol. Jo. 428, 792, C. A.

289a. —— Bills specifically appropriated to one account—Payment of proceeds to other account.]—A banker who has agreed with a customer to open two accounts in his name, & who holds bills which the customer has specifically appropriated to one account, is not entitled, without the customer's consent, to transfer the proceeds of such bills to the other account.—GREENHALGH (W. P.) & SONS *v.* UNION BANK OF MANCHESTER, [1924] 2 K. B. 153 ; 93 L. J. K. B. 844 ; 131 L. T. 637

292. *Add. Annotation :*—**Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683.

292a. —— —— ——.]—(1) The word "customer" in Bills of Exchange Act, 1909 (No. 27 of 1909, Commonwealth), s. 88 (1), which is in the same terms as the above sect. signifies a relationship in which duration is not of the essence, & includes a person who has opened an account on the day before paying in a cheque to which he has no title.

(2) The negligence referred to in the subsect. is negligence in collecting the cheque, not in opening the account. The test is whether the paying in of any given cheque coupled with the circumstances antecedent & present, was so out of the ordinary course that it ought to have aroused doubt in the banker's mind, & caused him to make inquiries. The standard of care required is that derived from the practice of bankers. —TAXATION COMRS. *v.* ENGLISH, SCOTTISH & AUSTRALIAN BANK [1920] A. C. 683 ; 89 L. J. P. C. 181 ; 123 L. T. 34 ; 36 T. L. R. 305, P. C.

Annotations :— As to (2) **Apld.** Hampstead Grdns. *v.* Barclays Bank (1923), 39 T. L. R. 229. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775 ; London & Montrose Shipbuilding & Repairing Co. *v.* Bank (1925), 31 Com. Cas. 67.

293. ***Add. Citation :***—88 L. J. K. B. 55.

Add. Annotations :—**Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921, 3 K. B. 110 ; Polemis & Furness, Withy, [1921] 3 K. B. 560 ; Jones *v.* Waring & Gillow, [1926] A. C. 670.

294. *Add. Annotation :*—**Mentd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623.

297. *Add. Annotations :*—**Mentd.** Calmenson *v.* Merchant's Warehousing Co. (1920), 125 L. T. 129 ; Everett *v.* Griffiths, [1921] 1 A. C. 631 ; Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305.

300. *Add. Annotations :*—**Apld.** London Provincial & South Western Bank *v.* Buszard (1918), 35 T. L. R. 142. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

301. *Add. Annotation :* —**Consd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

303. *Add. Citation :*— 63 Sol. Jo. 216.

304. *Add. Annotations :*— **Consd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

310. *Add. Annotations :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Mentd.** *Re* Gunsbourg, *Ex p.* Trustee, [1919] B. & C. R. 99.

312. *Add. Annotation :*— *Generally*, **Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

317. *Add. Annotation :*— *As to* (1) **Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

331. *Add. Annotations :* — **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Mentd.** Holt *v.* Markham (1922), 128 L. T. 719.

332. *Add. Annotations :* —**Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328 ; Jones *v.* Waring & Gillow, [1926] A. C. 670.

333. *Add. Annotations :*— —**Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328 ; Jones *v.* Waring & Gillow, [1926] A. C. 670.

333a. —— Payment into account under belief that customer alive—Liability to refund.]—Where money has been paid into the current account of the customer of a bank under a mistake of fact, such as the belief that the customer is still alive & entitled to the money, the money can be recovered back from the bank without joining the customer's legal personal representatives as defts. to the action.—ADMIRALTY COMRS. *v.* NATIONAL PROVI

289 ii. —— ——.]—In the absence of any special contract to keep a customer's accounts separate a bank may combine his accounts in different of the bank for the purof meeting his indebtedness to bank without notifying him or obtaining his consent thereto.—WALLINDER *v.* IMPERIAL BANK OF CANADA, [1925] 4 D. L. R. 390 ; [1925] 3 W. W. R. -CAN.

PART II. SECT. 1, SUB-SECT. 3.—A.

ii. —— ——.] — For certain a branch bank may be a separate organisation, but for all purposes of liability a bank is a unit & indivisible.—WHITE *v.* ROYAL BANK OF CANADA, [1923] 4 D. L. R. 53 O. L. R. 543.—CAN.

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Where a branch office of a bank, in of
for reward, sends to another office of the bank for collection on behalf of a egotiable documents of h as participation certificates by the Canadian Wheat . having been indorsed by

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303. —— ——.)— GARRIOCH BANK
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PART II. SECT. 1, SUB-SECT. 4.

317 xi. —— *Account in* ke
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bankers to satisfy or account, if able doul
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, [1917]
2 W. W. R. 2 B. C. R.
CAN.

& UNION BANK OF ENGLAND, LTD. (1922), 127 L. T. 452 ; 38 T. L. R. 492 ; 66 Sol. Jo. 422.

Add. Annotations :—**Consd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189. **Refd.** Bradford Old Bank *v.* Sutcliffe (1918), 88 L. J. K. B. 85.

338a. Necessity for demand—Whether condition precedent to action against banker on account.] -- Where money is standing to the credit of a customer on current account with a banker, in the absence of a special agreement a by the customer is a necessary it in the cause of action against the banker for money lent.—JOACHIMSON *v.* SWISS BANK CORPN., [1921] 3 K. B. 110 ; 90 L. J. K. B. 973 ; 125 L. T. 338 ; 37 T. L. R. 531 ; 65 Sol. Jo. 434 ; 26 Com. Cas. 196, C. A.

Annotations **Consd.** Admiralty Comrs. *v.* National Provincial & h American Continental Bank, Credit **Refd.** *Re* ors' Claim, [1922] 2 Ch. 589 'rosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372 ; r *v.* National cial & Union Bank of England, 1 K. B. 461.

342a. — Account in credit—Reasonable notice.] -- In the absence of special stipulation a banker can close his customer's banking account in credit only on giving him a reasonable notice, dependent on the nature of the account & the facts & circumstances of the case When a banking account, opened by with defts., & having a credit balance of some £7,000, was so interwoven with a "snowball" scheme of insurance devised by pltfs. that it became in respect to subscriptions to the scheme a part thereof :—*Held :* a month's notice by defts. to discontinue the account was not, in the circumstances of the , sufficient, but an injunction restraining defts. from the account must be refused.— P Y, LTD. *v.* LLOYDS BANK, T. L. R. 372.

358. *Add.* -- **Mentd.** Aksionairnoye A. M. Luther *v.* Sagor, [1921] K. B. 532 ; The te, [1922] P. 259 ; Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385.

363. *Add. Annotations :* **Consd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321. **Refd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189.

378. *Add. Annotation :* -- **Mentd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

387a. — — —

Immediately on his so paying them in the bank credited him with the amounts of the cheques in their ledger, but there was no agreement between the bank & the customer that he should be allowed to draw against the cheques before they were cleared, nor did he in fact draw against them until after the bank had received the proceeds:—*Held:* (3) apart from any question whether the bank had notice of any defect in the customer's title, they were not holders in due course, there being no evidence that they took the cheques for value. The mere fact that bankers credit a customer with the amounts of cheques before they are cleared does not make them holders for value; in order to entitle them to that character there must have been an agreement, express or implied, that the customer should be allowed to draw against the cheques before clearance, & that agreement must have been acted upon. —UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, SAME *v.* BARCLAYS BANK, [1924] 1 K. B. 775; 93 L. J. K. B. 690; 131 L. T. 271; 40 T. L. R. 302; 68 Sol. Jo. 716; 29 Com. Cas. 182, C. A.

Annotations:—*As to* (1) **Apld.** London & Montrose Ship- & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Reld.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. *As to* (2) **Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Reld.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

389. *Add. Annotations:*— **Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612. **Reld.** Banque Belge pour l'Etranger (Soc. Anon.) *v.* Hambrouck, Spanoghe (1920), 123 L. T. 495. **Mentd.** Brocklebank *v.* R., [1925] 1 K. B. 52.

391 *Add. Annotation:*—**Distd.** *Re* Harrison, Day *v.* Harrison (1920), 90 L. J. Ch. 186.

391a. — — **Cheques drawn by wife on bank manager's advice—Title of wife to balance.**] —A husband, in 1908, transferred the money standing to a current account at his bank in his own name into the joint names of himself & his wife. He did not inform his wife of the joint account, & always drew cheques on the account himself. He died in Nov. 1919. The wife never drew any cheque on the account until shortly before his death, when he was in failing health & unable to attend to business. The bank manager then informed her of the joint account, & advised her to draw a cheque, which she did. The husband had also from time to time made deposits in the joint names of himself & his wife, & in Aug. 1919, consolidated them into one deposit in the joint names. The wife never knew of this deposit until after her husband's death. There was then found among his papers an envelope indorsed with the wife's initials & containing the deposit receipt & a document in which he said: "I would like this paying away at once if possible as under," with a list of names with amounts against them:—*Held:* the money standing to the credit of both the current account & the deposit account belonged to the wife as survivor, & the document did not raise any presumption that the husband regarded the deposit as his own property.—*Re* HARRISON, DAY *v.* HARRISON (1920), 90 L. J. Ch. 186.

402. *Add. Annotation:*—**Reld.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

402a. **Effect of need for notice of withdrawal.**]—There is no difference in principle in the nature of a deposit requiring notice of withdrawal & a deposit not requiring notice of withdrawal.—*Re* GLENDINNING, STEEL *v.* GLENDINNING (1918), 88 L. J. Ch. 87; 120 L. T. 222; 63 Sol. Jo. 156.

409. *Add. Annotation:*—**Apld.** *Re* Westerton, Public Trustee *v.* Gray (1919), 122 L. T. 261.

409a. **Assignment by order in writing to bank to pay third party sum on deposit—Unindorsed deposit receipt—Letter to assignee.**] —About a year before his death, which happened in 1917, testator handed to his landlady, G., an envelope addressed to her describing it as a present to her. She was about to open it, when he took it from her hand & said he would keep it for her & locked it up in his despatch box. After testator's death there was found in his despatch box an envelope containing: (1) A deposit receipt for £500 deposited with his bank in 1914; (2) an order in writing signed by testator directing the bank to pay to G. the sum of £500 then on deposit; & (3) a letter addressed to G.: "You have been very kind to me & I desire to make some return by giving you the amount £500 now on deposit at the . . . bank as per receipt enclosed." The deposit receipt was not indorsed by testator & no notice was given to the bank of any assignment till after his death, the interest on the sum on deposit having been carried by the bank to his current account: *Held:* there was a valid & complete gift to G. of the sum on deposit by way of assignment under Jud. Act, 1873, s. 25

EE *v.* GRAY, 2 Ch. 104; 88 L. J. Ch. 392; 122 T. 63 Sol. Jo. 410.

A. **Reld.** Guatemal. (Republica de) *v.* Nunez (19 L. J. K. B. 935.

410. *Add. Annotations:* **Mentd.** *Re* Westerton, Public Trustee *v.* Gray, [1919] 2 Ch. 104; Richards, Jones *v.* Rebbeck, 1 Ch. 513.

411. *Add. Annotations:* **Mentd.** Public Trustee *v.* Gray, [1 2 Ch. 104; *Re* Richards, Jones *v.* Rebb [1921] 1 Ch. 513.

431. *Add. Annotation:* **Reld.** *v.* Roche (1926), 95 L. J. K. B. 915.

432. *Add. Annotation:* City Life Assce. (1925), 42 T. L. R. 45.

453. *Add. Annotation:* **Reld.** Allen Royal Bank of Canada (1925), 41 T. L. R.

PART II. SECT. 2, SUB-SECT. 3.—E.

390 i. *Joint account of husband & entitled to set off for husband's benefit*

BANK, [1921] 3 W. W. R. 430.—CAN.

PART II. SECT. 4, SUB-SECT. 3.

ss. Money paid to retire draft—Failure of purpose for which draft—Liability of bank to refund pltffs. could recover from the b amount paid to them to re draft.— BANK OF CANADA, [1921] 2 W. W. R. 370.—CAN.

in not; Liability by the the dr a

in duty for

in performing it. MAXWELL *v.* UNION BANK OF CANADA, [1922] 1 W. W. R. 7; 69 D. L. R. 130. CAN.

PART II. SECT. 5, SUB-SECT. 1.

OF CANADA C. L. R. 613.

454. *Add. Annotations :*—**Mentd.** Dey *v.* Mayo, [1920] 2 K. B. 346; Brown *v.* Swan (1921), 37 T. L. R. 787; Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

456. *Add. Annotation :*—**Mentd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

479. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

479a. Cheque credited before clearance—Whether bank holders for value—Bank stopping payment before final clearance.]—(1) Where a customer pays a crossed cheque into his bank, the question whether the bank receive it as holders for value or as agents for collection is a pure question of fact. The fact that the cheque is immediately credited in the ledger does not necessarily make the bank holders for value. That inference may be rebutted by notices in the pass-book & paying-in slip or other evidence showing that the customer could not draw before clearance.

(2) If the bank receive the cheque as agents for collection & stop payment before it is finally cleared at the clearing house, they can only receive & hold the proceeds as collecting agents for their customer, & not on the ordinary bank relationship of debtor & creditor. Consequently, in a winding up following on the stoppage the liquidator must pay the full proceeds of a cheque cleared after the stoppage to the customer, although it was cleared shortly before the actual winding up.—*Re* FARROW'S BANK, LTD., [1923] 1 Ch. 41; 92 L. J. Ch. 153; 128 L. T. 332; 67 Sol. Jo. 78; [1925] B. & C. R. 8, C. A.

479b. - - - - -.]—UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, SAME *v.* BARCLAYS BANK, No. 387a, *ante*.

484. *Add. Annotation :*—**Refd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K.

487. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Mentd.** Holt *v.* Markham, [1923] 1 K. B. 504.

489. *Add. Annotation :*—**Mentd.** The Sheaf Brook, [1920] P. 61.

493. *Add. Annotations :*—**Apld.** London Provincial & South Western Bank *v.* Buszard (1918), 35 T. L. R. 142. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

500. *Add. Annotation :*—*Generally*, **Mentd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

528. *Add. Annotation :*—*Generally*, **Mentd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

537. *Add. Annotations :*—**Consd.** Barclay *v.* Malcolm (1925), 133 L. T. 512; Jones *v.* Waring & Gillow, [1925] 2 K. B. 612. **Mentd.** Soc. Des Hôtels Le Touquet Paris Plage *v.* Cummings, [1922] 1 K. B. 451.

538. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

538a. ——.]—A. drew a cheque for £700 in favour of B. & gave it to B., who presented it forthwith. A. had current & deposit accounts at the bank, but her money on current account was not sufficient to meet the cheque without resort to the money on deposit. It had been the practice of the bank to allow A. to overdraw her current account so long as the overdraft was covered by her money on deposit. The bank refused payment of the cheque, not because of the state of A.'s current account, but because they doubted A.'s signature on the cheque. A. died before anything further was done :—*Held :* in the circumstances there had not been any appropriation or dedication of the money in the bank, or any constructive payment of the cheque; & there had been an incomplete gift *inter vivos* of the amount of the cheque, which gift would not be perfected by the assistance of equity.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.

540. *Add. Annotation :*—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

544. *Add. Annotations :*—**Apld.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [26] 2 K. B. 450. **Mentd.** Dey *v.* Pullinger [illegible] Co., [1921] 1 K. B. 77.

548. *Add. Annotation :*—**Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

549. *Add. Annotations :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102. **Mentd.** Neville *v.* London Express Newspaper, [1919] A. C. 368; *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.

PART II. SECT. 6, SUB-SECT. 1.

61. ——.]—A co. drew bills of [illegible] upon customers to whom they supplied goods & who accepted them [illegible] 1. The co. went [illegible] its current acc[illegible] with [illegible] they [illegible] owners of the [illegible] & that [illegible] to [illegible] in the [illegible] a [illegible] of [illegible] the bank held a mere right in in virtue of their lien, & the ob[illegible] for the purposes of a BANK, LT[illegible] & SON L[illegible] S. C. 235.—SCOT.

PART II. SECT. 8, SUB-SECT. 2.—A.

538 l. *Constructive payment—Cheque & credit slip stamped "paid."*]—WHITE *v.* ROYAL BANK OF CANADA, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—CAN.

PART II. SECT. 8, SUB-SECT. [illegible]

[illegible] sk. The [illegible] to [illegible] the [illegible] E. R. [illegible] E. L. R. [illegible] A [illegible] of amounts [illegible] from [illegible] for [illegible] [illegible] n of [illegible] of c[illegible] to the credit of the [illegible] in a designated bank & at [illegible] ce [illegible] to remit by draft to the head office of the business. Such charges were almost always paid to him by accepted cheque & deft. bank cashed such a cheque on it, paying the clerk the proceeds :—*Held :* the bank was negligent as inquiry should have been made as to the clerk's [illegible] & the unusual act of a firm cashing such a cheque, of a large amount, & a discrepancy between the name of the payee in the cheque & the name in the indorsement should have aroused R. *v.* ROYAL BANK OF [illegible] 20], 1 W. W. R. 198; 50 D. L. R. 293; 30 Man. L. R. 104.—CAN.

PART II. SECT. 8, SUB-SECT. 3.—A. — *Money advanced —Bank holding security.*

[illegible] 13 W. W. R. [illegible] S. C. R. 110; 59 D. L.

550. *Add. Annotation :*—**Reld.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

554. *Add. Annotation :*—**Reld.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

557. *Add. Annotations :*—**Consd.** *Re* Farrow's Bank, [1923] 1 Ch. 41. **Mentd.** Dey *v.* Mayo, [1920] 2 K. B. 346 ; Sutters *v.* Briggs, [1922] 1 A. C. 1.

560. *Add. Annotation :*—**Mentd.** *Re* Southerden, Adams *v.* Southerden, [1925] P. 177.

561. *Add. Annotation :*—**Mentd.** Goldfarb *v.* Bartlett & Kremer, [1920] 1 K. B. 639.

569. *Add. Annotation :*—**Reld.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

574. *Add. Annotations :*—**Reld.** Brown *v.* Swan (1921), 37 T. L. R. 787. **Mentd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

577. *Add. Annotation :*—**Mentd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

582. *Add. Annotations :*—**Mentd.** *Re* Gunsbourg, *Ex p.* Trustee, [1919] B. & C. R. 99 ; Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

585. *Add. Annotation :*—**Reld.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

586. *Add. Annotations :*—**Mentd.** Dey *v.* Mayo, [1920] 2 K. B. 346 ; Robinson *v.* Marsh, [1921] 2 K. B. 640 ; Sutters *v.* Briggs, [1922] 1 A. C. 1 ; *Re* Farrow's Bank, [1923] 1 Ch. 41.

589. *Add. Annotation :*—**Apld.** Hilton *v.* Westminster Bank (1926), 135 L. T. 358.

589a. —— **Mistake in telegram—Duty of bank to make inquiry.**]—Pltf., who had an account with defts., on July 31, 1921, drew a cheque, No. 117,285, & post-dated it Aug. 2. On Aug. 1 he telegraphed to defts. to stop payment of cheque No. 117,283, mentioning the date, the payee, & the amount. These particulars were correct as to cheque No. 117,285, but the number of the cheque was wrong. Cheque No. 117,285 was presented on Aug. 6, & the bank officials paid it, supposing that it had been drawn in place of the one that had been stopped. If they had searched, they would have seen that a cheque numbered 117,283 had already been presented & honoured. In an action for negligence :—*Held :* the view of the bank officials, that the cheque presented, being subsequent to the date of the stop instructions, might be a duplicate cheque which they were bound to cash, was correct, & pltf. was not entitled to recover.—Westminster Bank, Ltd. *v.* Hilton (1926), 43 T. L. R. 124 ; 70 Sol. Jo. 1196 ; *sub nom.* Hilton *v.* Westminster Bank, Ltd., 162 L. T. Jo. 450, H. L.

615. *Add. Annotations :*—**Mentd.** Quebec Ry. Light, Heat & Power Co. *v.* Vandry, [1920] A. C. 662 ; McDonald *v.* Nash, [1924] A. C. 625 ; Samuel *v.* Dumas, [1924] A. C. 431 ; Ouellette *v.* Canadian Pacific Ry., [1925] A. C. 569.

617. *Add. Annotation :*—**Reld.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

625. *Add. Annotation :*—**Mentd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

627. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

629. *Add. Citation :*—88 L. J. K. B. 55.

Add. Annotations :—**Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110 ; *Re* Polemis & Furness, Withy, [1921] 3 K. B. 560 ; Jones *v.* Waring & Gillow, [1926] A. C. 670.

631. *Add. Annotations :*—**Mentd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683 ; Goldman *v.* Cox (1924), 40 T. L. R. 423 ; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775 ; Australian Bank of Commerce *v.* Perel, [1926] A. C. 737 ; Jones *v.* Waring & Gillow, [1926] A. C. 670.

639a. **Payment to third party without valuable consideration—Right of bank to recover.**]—Deft. H. having possessed himself of crossed cheques which were drawn on pltf. bank in his favour & which purported to be drawn by his employer's authority defrauded his employer by paying them into a bank, which collected them & credited H. with the amounts. H. drew out these amounts & paid some of the money without valuable consideration to deft. S., who in turn paid into her account with deft. bank a portion of what she so received. S. had no notice of any defect in H.'s title, & she never paid into her account with deft. bank any money except money which was part of the proceeds of H.'s frauds. In an action for a declaration that the money standing to the credit of S. with deft. bank was the property of pltf. bank :—*Held :* on the assumption that H. obtained a voidable title to the proceeds of the cheques, yet pltf. bank had established their right to the money claimed, as it was capable of being traced.—Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 90 L. J. K. B. 322 T. L. R. 76 ; 65 Sol. Jo. 74 ; 26 Com. Cas. 72, C. A

Annotation :—**Expld.** Jones *v.* Waring & Gillow, (1925) 2 K. B. 6

640. *Add. Annotation :*— **Mentd.** Joachimson *v.* Bank Corpn., 1921] 3 K. B. 110.

644. *Add. Citation :*— 88 L. J. K. B. 55.

Add. Annotations :— **Mentd.** Joachimson *v.*

PART II. SECT. 9, SUB-SECT. 4.

sl. *Payment after notice of countermand—Liability of bank.*]—Garbroch *v.* Canadian Bank of Commerce, [1919] 3 W. W. R. 185.—CAN.

589 l. *By telegram—Payment after of countermand—Negligence.*]— defts. were guilty of a breach of duty as bankers.—Reade *v.* Bank of Ireland, Ltd., I. R. 22.—IR.

sm. *By notice of death.*]—The duty of a bank to pay a on notice of the drawer's death v. Briggs (Administrator Drury Estate), [1920] 2 W. W. R. ; 53 D. L. R. 351.—CAN.

sn. ——.]—It is not the de of the customer, but notice of his that operates as a revocation of authority of a bank to pay the ner's cheque.—Kendrick *v.* Bank & Bowman (1920), 47 O. I 372 ; 15 O. W. N. 135.—CAN.

PART II. SECT. 10.

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3 W. W. R. 969.—CAN.

Swiss Bank Corpn., [1921] 3 K. B. 110; *Re* Polemis & Furness, Withy, [1921] 3 K. B. 560; *r.* [1926] A. C.

646. *Add. Annotation:*—*As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

652. *Add. Annotations:*— **Refd.** Goldman *v.* Cox (1924), 40 T. L. R. 714. **Mentd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

662. *Add. Annotation: Generally*, **Mentd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

663. *Add. Annotations:* **Mentd.** Quebec Ry Light Heat & Power Co. *v.* Vandry, [1920] A. C. 662; McDonald *v.* Nash, [1924] A. C. 625; Gunned *v.* Dumas, [1924] A. C. 431; *r. r.* Canadian Pacific Ry., [1925] A. C.

666. *Add. Annotation:* **Mentd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

668a. ——— ———.]—M., who was secretary & managing director of pltf. co., represented that he had bought goods for them from W., & the co. drew cheques to the aggregate amount of £762 in payment on a South African bank, making them payable to W., & handing them to M. as manager that he might hand them to W. M., instead of doing so, paid the cheques with forged indorsements into his own account with deft. bank which credited him with the amounts & obtained payment from the South African bank. The cheques were signed by two directors, including M., of pltf. co. M. applied the money received from the cheques with the exception of about £272 for W., paying out of the proceeds of five cheques "to order" for £62 10*s.* each four sums of £60 from his private account to W. One cheque, dated May 27, 1918, for £97 10*s.*, which was payable to "self or order" & signed by M. & a co-director, was refused by the bank, & came back to them after such refusal with M.'s name written in after the word "self," but the alteration was not initialed by both directors, & the addition was in M.'s writing. Pltf. co. repudiated the transactions & sued the bank for damages for conversion of the cheques, or alternatively for money had & received. Deft. bank claimed protection under Bills of Exchange Act, 1882 (c. 61), s. 82, & also as holders for value: *Held:* (1) the *onus* of proving that there was no negligence had been discharged by the bank, except as to the five cheques for £62 10*s.* each; (2) the bank's duty with regard to these five cheques was to have made inquiries, & they were negligent in paying them into M.'s account; (3) the bank was negligent in cashing the cheque of May 27, 1918, as it should have seen that the alteration in it was made without the concurrence of both directors; (4) the evidence was not sufficient to show that M. paid anything out of his private account to W. in respect of the fifth cheque for £62 10*s.*; (5) there must be judgment for pltf. co. for £2 10*s.* on four of the cheques "to order" for £62 10*s.*, £62 10*s.* on the fifth cheque for the same amount, & £97 10*s.* on the cheque of May 27, 1918, making an aggregate amount of £170.—SOUCHETTE, LTD. *v.* LONDON COUNTY, WESTMINSTER & PARR'S BANK, LTD. (1920), 36 T. L. R. 195.

670. *Add. Annotations:*—**Mentd.** Dey *v.* Mayo, [1920] 2 K. B. 346; Brown *v.* Swan (1921), 37 T. L. R. 787; Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1921] 1 K. B. 775.

671. *Add. Citations:*—*sub nom.* MATHEWS *v.* WILLIAMS, BROWN & CO., 10 R. 210.

673. *Add. Annotation:*—**Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683.

674. *Add. Annotation:*—*As to* (2) **Refd.** London & Montrose Shipbuilding & Repairing Co *v.* Barclays Bank (1925), 31 Com. Cas. 67.

676. *Add. Annotations:*—**Apld.** Brown *v.* Swan (1921), 37 T. L. R. 787. **Consd.** *Re* Farrows' Bank, [1923] 1 Ch. 41. **Refd.** Dey *v.* Mayo, [1920] 2 K. B. 316; Sutters *v.* Briggs, [1922] 1 A. C. 1; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1921] 1 K. B. 775.

677. *Add. Annotations:* **Refd.** Dey *v.* Mayo, [1920] 2 K. B. 346; Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41.

678. *Add. Annotation:*— **Mentd.** Souchette *v.* London County Westminster & Parr's Bank (1920), 36 T. L. R. 195.

681. Before this case add "*See, also*, Nos. 674–

684. *Add. Annotation:* **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

685. *Add. Annotation:*— **Apld.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

687. *Add. Annotation:*— **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

690. *Add. Annotations:*—*As to* (1) **Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Australian Bank of Commerce *v.* Perel, [1926] A. C. 737. *Generally*, **Refd.** Goldman *v.* Cox, (1924), 40 T. L. R. 423. **Mentd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

691. *Add. Annotation:*—*As to* (2) **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

691a. ——— ——— **Cheque payable to & indorsed by public official.**]—A banker to whom a private

PART II. SECT. 12, SUB-SECT. 3.

1. Had is *negligence*. *Defective* customer. *Collection for stranger.* [illegible] to a [illegible] is [illegible] a [illegible] by [illegible] in [illegible] of [illegible] or [illegible] or bearer & [illegible] or [illegible] c," or "bank not negotiable." Without making any inquiry as to the man's title to the cheques the bank collected them. On the following day the man, by an open cheque, drew out almost the whole of the amount to the credit of his account, & paid in for c[illegible] four other [illegible] or b[illegible] it in had no title. [illegible] four were co[illegible] by the bank almost without [illegible]y:—*Held:* the circumstances in which the account was opened was such as to put the bank upon inquiry; the duty of inquiry extended to the transactions of the next day & in the absence of [illegible] inquiry the bank was guilty of negligence. LONDON BANK OF AUSTRALIA, LTD. *v.* KENDALL (1920), 26 C. L. R. 401.—AUS.

customer hands, for collection on his account, a cheque payable to & indorsed by a public official is put upon inquiry whether the customer is entitled to the cheque, & acts negligently if he credits the customer with the proceeds of the cheque without having made any such inquiry.

The Overseas Military Forces of Canada engaged in the European war had an estates office in England authorised by the Secretary of State for the Colonies to perform in accordance with statutory conditions the duties of collecting & distributing the estates of members of these forces dying in Europe. A sergeant employed at the office misappropriated during a period of ten months thirty-two cheques of the aggregate value of about £3,900, representing money belonging to the estates of deceased soldiers. Each of the cheques was drawn payable to "The Officer in Charge, Estates Office, Canadian Overseas Military Forces," & was indorsed generally by that officer under the same description with a view to its being sent to the Paymaster-General of these forces for payment of the amount to the beneficiaries, or in some cases directly to the beneficiary, & each cheque was crossed generally. The sergeant paid the first two cheques into a branch of defts.' bank at which he had a small private account of his own & the rest of them into another branch of the bank which passed them on to the former branch. No inquiry was made at either branch whether he was entitled to the cheques, & at the former branch they were credited to his account & payment of them was received for him. In an action by the Paymaster-General against defts. for damages for conversion of the cheques:—*Held:* the fact that the cheques were drawn payable to & indorsed by a public official should have put the cashiers of defts. upon inquiry whether their private customer was entitled to the cheques; in crediting the cheques to him without any inquiry the cashiers of both the branches had been guilty of negligence; & therefore defts. were not protected by Bills of Exchange Act, 1882 (c. 61), s. 82, from liability to pltf.—Ross v. London County, Westminster & Parr's Bank, [1919] 1 K. B. 678; 88 L. J. K. B. 427; 120 L. T. 636; 35 T. L. R. 315; 63 Sol. Jo. 411.

ation:—**Reld.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

691b. —— —— **Cheque payable to company.**]—Underwood (A. L.), Ltd. v. Bank of Liverpool, Same v. Barclays Bank, No. 387a, *ante*.

691c. —— —— ——.]—In 1922 pltfs. were building ships for a firm, L. M. & P., & in connection with that business L. M. & P. sent pltfs. a crossed cheque for £8,000. That cheque was duly received at pltfs.' office & B., a director, signed a receipt form on the back of the cheque as follows: "L. & M. Shipbuilding Co. T. B. director." Another director of pltfs., J., then indorsed the cheque to the order of another co. of which B. was a director, B. & Co. Ltd. The cheque was then indorsed by B. "*for & on behalf of B. & Co. T. B. director,*" & was *paid into the* account of B. & Co. *at a branch of defts.*; & subsequently *by arrangement between* defts. & himself B. drew £2,000 out of the £8,000 thus credited to B. & Co. Ltd. for his own private purposes. J. had no right to indorse the cheque to the order of B. & Co., & B. & Co. had no right to the proceeds of the cheque. In 1923 pltfs. went into liquidation, & the liquidator on examining the accounts found that the cheque for £8,000 had been misapplied, & also that other sums were owing by B. to pltfs. The liquidator thereupon proceeded by a misfeasance summons against J. & B., & upon that summons an order was made for £150 against J. & £10,150 against B. The money was not paid, & pltfs. brought an action against defts. for conversion of the £8,000 cheque:—*Held:* there was clear evidence of negligence on the part of defts., & Bills of Exchange Act, 1882 (c. 61), s. 81, gave no defence to the claim.

Repairing Co., Ltd. v. Barclays Bank (1926), 31 Com. Cas. 182, C. A.

692a. ——.]—Taxation Comrs. v. English, Scottish & Australian Bank, No. 292a,

692b. — — **Question of fact.**]—The q whether a banker in receiving payment of a cheque for a customer has acted without negligence, so as to be protected by Bills of Exchange Act, 1882 (c. 61), s. 82, if the customer has no title thereto, is a question of fact. Where there was a missing link in the chain of identification of the customer: *Held:* that fact ought to have put the bank upon inquiry, & the bank was not protected by the sect. Hampstead Guardians v. Barclays Bank, Ltd. (1923), 39 T. L. R. 229; 67 Sol. Jo. 440.

693. *Add. Annotation:* **Reld.** London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.

694. For "forgot" in the seventh line of the paragraph read "forged."

Add. Annotations: **Mentd.** Dey v. Mayo, [1920] 2 K. B. 346; Brown v. Swan (1921), 37 T. L. R. 787; Sutters v. Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41; Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

697. *Add. Annotation:* **Mentd.** Sun Bldg. Soc. v. Western Suburban Bldg. Soc., [1921] 2 Ch. 83.

703. *Add. Annotations:* **Mentd.** Quebec Ry. Light, Heat & Power Co. v. Vandry, [1920] A. C. 662; McDonald v. Nash, [1924] A. C. 625; Samuel v. Dumas, [1924] A. C. 431;

A. C.

Add. Annotation: **Consd.** *Re* v. Featherley (1925), 70 Sol. Jo. 61

PART II. SECT. 13, SUB-SECT. 1.

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717. *Add. Annotation* :—**Mentd.** Souchette *v.* London County Westminster & Parr's Bank (1920), 36 T. L. R. 195.

734. *Add. Annotations* :—**Apld.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. **Reld.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452; Steam Saw Mills Co. *v.* Baring, Archangel Saw Mills Co. *v.* Baring, [1922] 1 Ch. 214; Jones *v.* Waring & Gillow, [1926] A. C. 670.

752. *Add. Annotation* :—**Mentd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

753. *Add. Annotation* :—**Mentd.** *Re* Dresdner Bank (London Agency) (1920), 64 Sol. Jo. 426.

756. *Add. Annotations* :—**Mentd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 3 K. B. 532; The Tervaete, [1922] P. 259; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385.

756a. Credit conditional on tender of approved insurance policy - What is approved insurance policy.]—Bankers issued a letter of credit to English sellers of 100 tons of steel plates to Dutch buyers. By the terms of the letter of credit the bankers agreed to honour the sellers' draft for the amount of the purchase-money, which included freight & insurance to R., provided the draft were accompanied by an approved insurance policy covering the shipment of the goods. The sellers presented their draft accompanied by a certificate of insurance which did not contain & did not offer any means of ascertaining the full terms of the insurance. In an action by the sellers against the bankers for not honouring the draft: *Held:* the certificate was not an "approved insurance policy" within the meaning of the letter of credit, & the bankers were justified in refusing to honour the draft. An approved insurance policy is one to which no reasonable objection can be made.—SCOTT (DONALD H.) & CO., LTD. *v.* BARCLAYS BANK, LTD., [1923] 2 K. B. 1; 92 L. J. K. B. 772; 129 L. T. 108; 39 T. L. R. 198; 67 Sol. Jo. 253, C. A.

e Mackechnie, [1925] 2 K. B. arine Insce. (1926), 42 T. L. R. 692. **Mentd.** Malmberg *v.* Evans (1924), 41 T. L. R. 38.

756b. Irrevocable letter of credit - Payment for goods - Refusal of bank to pay invoices—Liability of bank to seller.]—Pltfs. entered into a contract with buyers in C. to manufacture & ship machinery by instalments over several months at agreed prices, but subject to a stipulation that should the cost of labour or wages increase, there should be a corresponding increase in the purchase price. The buyers were also to open a "confirmed irrevocable credit" in favour of pltfs. with a bank in this country, & to pay for each shipment as it took place. In pursuance of this arrangement defts., who were the buyers' bankers in L., wrote to pltfs. stating that they would pay bills drawn on the buyers to the extent of £70,000, the bills to be accompanied by documents & to be received before Apr. 14, 1921, "this to be considered a confirmed irrevocable credit." Pltfs. shipped two instalments under the contract & received payment under the letter of credit. The buyers then found that the invoices included an increase in the purchase price on account of wages & material, & instructed defts. only to pay so much of the next invoices as represented the original prices. Defts. accordingly refused to pay the bill presented on the next shipment & pltfs. then cancelled the contract, claiming damages from defts. as on a repudiation by the buyers:—*Held:* the credit being irrevocable, the refusal of defts. to take & pay for the particular bills on presentation of the proper documents constituted a repudiation of the contract as a whole, & pltfs. were entitled to damages so reckoned. The basis of this form of banking facility is that the buyer is taken, as between himself & the banker, to accept the seller's invoices as correct. Any adjustment must be made by way of refund by the seller & not by way of retention by the buyer.—URQUHART LINDSAY & CO. *v.* EASTERN BANK, LTD., [1922] 1 K. B. 318; 91 L. J. K. B. 274; 126 L. T. 534; 27 Com. Cas. 124.

lation :—**Reld.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

756c. Revocable letter of credit—Duty of bank to give notice of withdrawal.]—A firm in W., who wished to buy a quantity of asbestos sheets from pltfs., a firm in L., instructed defts. to open a credit in favour of pltfs. Defts. accordingly wrote a letter dated June 14, 1920, to pltfs. informing them of their instructions & adding that their letter "is merely an advice of the opening of the above-mentioned credit, & is not a confirmation of the same." On July 20, 1920, pltfs. shipped part of the goods to the buyers & were paid the agreed price by defts. on presentation of the stipulated documents which included bills of lading & a draft on defts. On Aug. 4, 1920, defts. were instructed by cable that the credit was withdrawn. On Sept. 30, 1920, pltfs., not having had notice of the withdrawal of the credit, shipped the balance of the goods to the buyers, but defts. refused payment of a draft for the price. Pltfs. brought an action against defts. for recovery of the balance of the credit, alleging (*inter alia*) that it was the duty of defts. to give to pltfs. reasonable notice that the credit had been withdrawn. There was evidence that it was the practice of defts. at once to inform persons to whom revocable credit was given of the withdrawal of the credit, but that in this instance, owing to pressure of business, they had forgotten to do so. Among the documents tendered to

a ... as to ... by R.—CHACK *v.* DAY, [1925] 3 D. L. R. 1028; [1925] 2 W. W. R. 715.—CAN.

PART II. SECT. 16.

—)—A document in ... which we ... your bills, ... G. & Co., of London, to ... ,875 on the ... s to be drawn ... & to ... inform you that we are in receipt of advice by wire from our London office that a consignment ... of jute of a particular ... Calcutta to Antwerp, ... Dec. 1920." Among the ... the two following were ... important:—(a) "Please note that this advice does not release you from the liability attaching to the drawer of a bill of exchange"; (b) "Under present conditions we can give no undertaking to negotiate ... under this credit":—*Held:* the ... ment was not an ordinary banker's letter of credit.—CHANDA ... BANKY *v.* NATIONAL BANK OF ... LTD. (1923), I. L. R. 51 ... IND.

defts. on the application for payment on the second occasion was a bill of lading which defts. alleged was out of order, but which, according to pltfs., was in exactly the same terms as the former bill of lading accepted by defts. without objection:—*Held:* (1) a letter in the form of that written by defts. on June 14, 1920, intimated to the person in whose favour the credit was opened that he might find that the credit was revoked at any time; (2) there was no legal obligation on defts. to give notice of the revocation of the credit; (3) the giving of notice was an act of courtesy which it was very desirable should be performed, but it was not founded upon any legal obligation.—CAPE ASBESTOS CO., LTD. *v.* LLOYDS BANK, LTD., [1921] W. N. 274.

760. *Add. Annotations:*—**Mentd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Rand *v.* Craig, [1919] 1 Ch. 1; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool & Martins, Underwood *v* Barclays Bank, [1924] 1 K. B. 775.

767. *Add. Annotation:*—**Reld.** National Provident Institution *v.* Brown, Brown *v.* National Provident Institution, Provident Mutual Life Assce. Assocn. *v.* Ogston, Ogston *v.* Provident Mutual Life Assce. Assocn. (1921), 8 Tax. Cas. 57.

779. *Add. Annotation:*—**Reld.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

785. *Add. Annotation:*—**Mentd.** Omnium Insce. Corpn. *v.* United London & Scottish Insce. [illegible], 58 T. L. R. 380.

798. *Add. Annotation:*—**Mentd.** Maskell *v.* Hill, [1921] 3 K. B. 157.

806. *Add. Annotation:*—**Mentd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

809. *Add. Citations:* 88 L. J. K. B. 85; 119 L. T. 727.

820. *Add. Annotation:*—**Mentd.** *Re* Morris, Mayhew *v.* Halton, [1921] 1 Ch. 172.

844. *Citations:*—For "01 L. J. Ch. 732" read "01 L. J. Ch. 723."

862. *Add. Annotations:*—**Mentd.** Brandon *v.* Michelham (1919), 35 T. L. R. 617; G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. [illegible]

PART II. SECT. 19.

sa. *Unauthorised application of proceeds—In payment of borrower's debts to other customers—Right to damages.*]—After crediting pltf. with the proceeds of a note which it discounted for him, deft. bank, without authority from him, applied nearly all of such proceeds to pay off debts which he owed to other customers of the same bank, & paid itself the amount of the note out of the proceeds of promissory notes which it held as collateral securities for advances made by it to him:—*Held:* pltf. was entitled to nominal damages & costs for the breach of the contract to lend him the money, & to judgment for the amount of the proceeds of his note which the bank had so applied, together with interest.—MARSH *v.* ROYAL BANK OF CANADA, [1922] 1 W. W. R. 486; [illegible] D. L. R. 659; 15 Sask. L. R. 201. CAN.

PART II. SECT. 20, SUB-SECT. 1.

809 i. *Discharge of overdraft [illegible] of cheque—What amounts to acceptance.*]—*Held:* the action of the bank in retaining & clearing the cheque was not conclusive on the question of acceptance, & as the bank had not accepted the proceeds of the cheque in full settlement, judgment had been rightly entered for the bank.—BUCKE *v.* NATIONAL BANK OF SOUTH AFRICA, LTD., [1921] App. D. 59.—S. AF.

PART II. SECT. 20, SUB-SECT. 2.

y i. —— —— ——.]—Where there is an agreement between a bank & its customer, that he shall pay interest at the rate of 8 per cent. upon a promissory note, the agr[illegible] not entirely void, & the [illegible] remains liable to pay interest at rate of 5 per cent.—STANDARD BANK OF CANADA *v.* ALBERTA ENGINEERING CO., LTD. (1917), 1 W. W. R. 1177; 33 D. L. R. 542; 11 Alta. L. R. 96.—CAN.

y ii. —— —— ——.]—[illegible] tion by a bank for an illegal rate of interest merely avoids the rate & not the entire contract for interest.—UNION BANK *v.* FARMER, [1917] 1 W. W. R. 1361.—CAN.

y iii. —— —— ——.]—Pltf. was indebted to deft. bank for which debt they took his note charged with interest at 9 per cent. Order made for reduction of interest to 5 per cent.—[illegible] *v.* UNION BANK OF CANADA [illegible], 63 D. L. R. 688.—CAN.

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PART II. SECT. 21, SUB-SECT. 1.

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n. Add "[illegible] *d.*, 58 S. C. R. 4

PART II. SECT. 21, SUB-SECT. 2.

o i. ——.]—QUEBEC BANK *v.* PHILIPS, [1917] 2 W. W. R. 365; 10 Sask. L. R. 190; 36 D. L. R. 440.—CAN.

without [illegible]ing that the moneys were [illegible] upon the security in part of lands.—ROYAL BANK OF CANADA *v.* GOLD, [1918] 2 W. W. R. 715; 24 B. C. R. 145; 41 D. L. R. 2[illegible]

a i. —— —— *New note maker—Rights of bank.*]—*Held:* [illegible] bank was entitled to recover on the note.—BANK OF MONTREAL *v.* WILDERFF, [1917] 2 W. W. R. 615; 24 B. C. R. 73; 34 D. L. R. 26.—CAN.

a ii. —— —— *Conversion of specific security into general security.*]—*Held:* as the bank knew that debtor had no right to hypothecate generally the notes they could not recover, not being holders in due course.—BANK OF MONTREAL *v.* NORMANDIN, [1925] 3 D. L. R. 975; [1925] S. C. R. 687. CAN.

f ii. —— *Obtained to cover overdraft—Alleged fraud of manager.*]—Pltf. alleged that a bank manager obtained a note from him without disclosing that the note was for payment of an overdraft then due to the bank. Application for judgment dismissed for want of any evidence of fraud on the bank manager's part.—[illegible]ETH *v.* ROYAL BANK OF CANADA (1921), 67 D. L. R. 740.—CAN.

f ii. —— *Renewal—Effect of.*]—The [illegible]al by defts. of a promissory note to pltf. bank as security for a [illegible]—*Held:* not to estop them from the [illegible] of the proceeds [illegible] on note which [illegible] d [illegible] of [illegible] C [illegible] D. L. R. 50 [1925] 1 W. W. 21 Alta. L. 337.—CAN.

PART II. SECT. 21, SUB-SECT. [illegible]

m i. —— *Stock [illegible] of [illegible] of [illegible] er.*]—A [illegible] who had a secured loan [illegible] with a bank which was operated upon in accordance with the above practice, averred that the bank had sold her shares without her authority, in breach of their obligation to retain [illegible] shares unless realised for red[illegible] of the loan & to retransfer the shares on repayment of the loan:—*Held:* defenders had acted [illegible] to their usual practice, [illegible] to & approved by the firm of [illegible]ers whom [illegible] had em[illegible]ed as her agents in the transactions, & [illegible] was barred from insisting in the action.—CAMERON *v.* BANK OF [illegible]D, [1922] S. C. (H. L.) 12[illegible] 59 L. R. 312.—SCOT.

p i. *Shares of company—Sale before default—Measure of [illegible]*—GEORGESON *v.* DOMINION B[illegible] 3 D. L. R. 807; 2 W. W. [illegible] CAN.

[illegible] *Bearer securities Pledged to [illegible]mer [illegible]*—BANK OF MONTREAL *v.* [illegible] D. L. R. 39, [illegible] W [illegible] CAN.

[illegible]T II. SECT. 21, [illegible] 6.

[illegible] of [illegible] the [illegible] it [illegible] BANK W. R. 121 CAN.

[illegible]d not cover [illegible]ney *v.* DESCHER, *v.* ADAMES, [1923] 8 Alta. L. R. 490;

865. *Add. Annotations :* —**Apld.** *Re* Allester, [1922] 2 Ch. 211. **Mentd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

865a. **Bills of lading pledged—Authorised sale by pledgor—Title of bank to proceeds.**]—A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice obtained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees to remit the entire net proceeds as realised :—*Held :* the bank's previous rights as pledgee remained unaffected by this common & convenient mode of realisation. *Re* ALLESTER (D.), Ltd., [1922] 2 Ch. 211 ; 91 L. J. Ch. 707 ; 127 L. T. 431 ; 38 T. L. R. 611 ; 66 Sol. Jo. 486 ; [1922] B. & C. R. 190.

Add. An **Mentd.** Dey *v.* Mayo, [1920] 2 K. B. 316 ; Sutters *v.* Briggs, [1922] 1 A. C. 1 ; *Re* Farrow's Bank, [1923] 1 Ch. 41.

916. *Add. Annotation :* —**Mentd.** Ord *v.* Ord, [1923] 2 K. B. 432.

921. *Add. Annotation :* **Folld.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322.

921a. — — — — Defts. acted as bankers for a firm up to Feb. 3, 1914, when the firm being insolvent by deed assigned all their property to pltf. as trustee for their creditors. The deed provided that payments to the creditors should be made upon the basis of a bkpcy. distribution of the property & that secured creditors should have the same rights as under a bkpcy. At the date of the deed the firm had £2,934 to the credit of their current account in deft. bank, & the bank held certain shares as security for an advance to the firm. These shares were subsequently sold by the bank & realised £812 in excess of the amount of the advance to the firm. Before Feb. 3, 1914, the firm had discounted with the bank a number of bills of exchange, which matured after that date, & in respect thereof the firm became the debtors of the bank to the amount of £19,941. In an action by pltf. as trustee under the deed to recover from the bank the two sums of £2,934 & £812, the bank claimed a lien on those sums & also to set off a sufficient portion of £19,941 against those sums :—*Held :* the bank's claim was right on both points.—BAKER *v.* LLOYDS BANK, [1920] 2 K. B. 322 ; 89 L. J. K. B. 912 ; 123 L. T. 330 ; [1920] B. & C. R. 128.

921b. — — — — **Balance of proceeds of sale of shares—Held as security for advances.**]—BAKER *v.* LLOYDS BANK, No. 921a, *ante.*

923. *Add. Annotation :*—**Consd.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322.

925. *Add. Annotation :* —**Refd.** *Re* Southerden, Adams *v.* Southerden, [1925] P. 177.

926. *Add. Annotation :*—**Consd.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322.

932. *Add. Annotation :*—**Mentd.** Barker *v.* Stickney, [1918] 2 K. B. 356.

932a. — — **Joint & several guarantee—Termination.**]—By an agreement the six signatories thereto jointly & severally agreed with a Canadian bank to guarantee repayment up to a fixed sum of all liabilities, including interest, which a customer had or should incur to the bank : it was provided that the agreement should be a continuing guarantee "until the undersigned, or the exor. or administrator of the undersigned, shall have given the bank notice in writing to make no further advances on the security of this guarantee." In 1913, the bank, without notice to the guarantors but with the assent of the debtor, increased the rate of interest upon the advances to 8 per cent., though, by

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MONTREAL BANK
D. L. R. 208 [1917] 1 W. W. R. 1361.—CAN.

v. *Loss*
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PART II. SECT. 21, SUB-SECT. 7

LUMBER CO., *Exp* BANK [1924] 2 D. L. R. 160 ; 4 CAN.

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di. — — *Subsequent assignment to* — *Duty of* [*to*
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bank realised under
: *Held :* pltf. was entitled to
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PART II. SECT. 21, SUB-SECT.
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PART II. SECT. 22, SUB-SECT. 1.—A

n i. — — —.]—A bank has not a lien in respect of a deposit or balance to the credit of a customer, as there is no specific property on which a lien can operate.—*Re* Morris, CONEYS *v.* Morris, [1922] 1 I. R. 81.—IR.

PART II. SECT. 22, SUB-SECT. 1.—F.

sm. *Pledged to third party—Duty of bank to disclose lien.*
a duty existed.—LAZARD
& Co. *v.* UNION BANK OF CANADA (1920), 47 O. L. R. 608 ; 18 O. W. N. 290 ; 51 D. L. R. 636.—

PART II. SECT. 22, SUB-SECT. 2.

m i. — — —.)—*Held :* money to the credit of the customer not shown to be trust funds, might be retained & set off by the bank as against the
btedness of the customer on the
.—ROY *v.* CANADIAN BANK OF
OMMERCE (1918), 24 B. C. R. 397 ; 3 D. L. R. 742.—CAN.

sp. *Bank cashing cheque—Holder in-to bank.*)—A bank, to which a
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of the cheque a debt
to it by the holder.—ROYXEL *v.* ROYAL BANK OF CANADA, [1918] 2 W. W. R. 791 ; 11 Sask. L. R. 215.—CAN.

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UNION BANK *v.* FARMER, 1 I. R. 136.—IR.

Bank Act (R. S. Can. c. 29), s. 91, it was illegal for a bank to charge more than 7 per cent. Subsequently one of the signatories died, & his exors. gave notice purporting to terminate the liability of the estate of the deceased under the guarantee:—*Held:* (1) the guarantee remained in force against all the guarantors until each & all of them or their respective exors. or administrators gave notice to determine it; (2) the increase in the rate of interest did not discharge the guarantors, but they were liable for the principal sum advanced & for such interest as the debtor was legally to pay.—EGBERT v. NATIONAL CROWN BANK, [1918] A. C. 903; 87 L. J. P. C. 186; 119 L. T. 659; 35 T. L. R. 1, P. C.

Annotation:—As to (2) **Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

961. *Add. Annotation:*—**Mentd.** Ratner *v.* London Joint City & Midland Bank (1922), 38 T. L. R. 253.

978. *Add. Annotations:*—**Mentd.** Bradford Old Bank *v.* Sutcliffe (1918), 88 L. J. K. B. 85; *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189.

985. *Add. Annotation:* — **Consd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

986. *Add. Annotation:*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1921] 1 K. B. 461.

986a. —— —— Without consent of customer.] — It is an implied term of the contract between a banker & his customer that the bank will not divulge to third persons, without the consent of the customer express or implied, either the state of the customer's account, or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by order of a ct., or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interests requires it.

Pltf. was a customer of deft. bank. A cheque was drawn by another customer of defts. in favour of pltf., who instead of paying it in to his own account indorsed it to a third person who had an account at another bank. On the return of the cheque to defts. their manager inquired of the last-named bank who the person was to whom it had been paid, & was told it was a bookmaker. The information defts. disclosed to third persons:—*Held:* that disclosure constituted a breach of defts.' duty to pltf., for though the information was acquired not through pltf.'s account but through that of the drawer of the cheque, it was acquired by defts. during the currency of pltf.'s account & in their character as bankers.—TOURNIER *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, [1924] 1 K. B. 461; 93 L. J. K. B. 449; 130 L. T. 682; 40 T. L. R. 211; 68 Sol. Jo. 441; 29 Com. Cas. 129, C. A.

Annotation:— **Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. [illegible]

987. *Add. Annotation:* — **Refd.** Tournier *v.* National Provincial & [illegible] Bank of England, [1921] 1 K. B. 461.

990a. Disclosing any other information relating to customer.]—TOURNIER *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, No. 986a. *ante.*

1010. *Add. Annotation:* **Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1012. *Add. Annotation:* **Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1012a. —— —— Entries tending to incriminate.] On an application under Bankers' Books Evidence Act, 1879 (c. 11), s. 7, for leave to inspect & take copies of entries in a banker's books before the trial of an action, the ct. is guided by the general rules regulating the inspection of documents before trial. Therefore if resp. to the application, being a party to the action, objects in proper form that the entries tend to incriminate him, the ct. will not grant the leave applied for. WATERHOUSE *v.* BARKER, [1924] 2 K. B. 759; [illegible] K. 89; 132 L. T. [illegible]; 40 T. L. R. 805; [illegible] C. A.

1013. *Add.* [illegible] **Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1016. *Add. Annota* [illegible] **Refd.** Waterhouse *v.* Barker, [1924] [illegible] K. B. 759.

1017. *Add. Innotation:* [illegible] *As to* (1) **Apld.** Waterhouse [illegible] Barker, [1924] 2 K. B. 759.

1018. *Add. Annotation:* **Apld.** Waterhouse [illegible] Barker, [1924] 2 K. B. 759.

1019. *Add. Annotation:* **Refd.** Waterhouse *v.* Barker (1924), 132 L. T. 15.

1022. *Add. Annotation:* **Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

PART II. SECT. 23.

935 i. *Whether surety discharged by increase in rate of interest.*]—*Held:* an increase in the rate of interest [illegible] by the bank to an amount in excess of that authorised by Canadian Bank Act, without intimation to the guarantors, did not discharge them from their liability.—EGBERT *v.* NATIONAL CROWN BANK, [1918] A. C. 903; 87 L. J. P. C. 186; 119 L. T. 659.—**CAN.**

H. S. P. MERCHANTS BANK OF [illegible]DA *v.* BUSH, [1918] 2 W. W. R. 574, 631.—**CAN.**

935 iii. —— *Taking new security from principal debtor.*]—BANK OF NEW ZEALAND *v.* BAKER, [1926] N. Z. L. R. 462.—**N.Z.**

of customer.]—Even if a certificate given by a customer of a bank of the correctness of the condition [illegible] account as stated therein const[illegible] an account stated between the [illegible] yet such [illegible] conclusive as against the [illegible] surety of the customer.—STANDARD BANK OF CANADA *v.* ALBERTA FEEDING Co., LTD., [1917] 1 W. W. R. 1177.—**CAN.**

[illegible] ment [illegible] An [illegible] In the [illegible] given [illegible] bank that the admission of an creditor & the [illegible] cannot be effective to prevent the sureties from objecting to [illegible] not to charges, which [illegible] not [illegible] proper to the [illegible] of the bank. NORTHERN C[illegible] FIC, LTD., [illegible] 1 W. W. R. 1205; 33 D. L. R. 3[illegible] **CAN.**

[illegible] *Advance als[illegible]* of [illegible] a [illegible] *by* [illegible]*y to* [illegible] advan[illegible] for the [illegible] curity [illegible] the [illegible] to the [illegible] [illegible] of a [illegible] [illegible] [illegible]

BARRISTERS.

9. *Add. Annotation :*—**Mentd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley (1922), 39 T. L. R. 45.

71. *Add. Annotation :*—**Refd.** Marson *v.* Unmack [1923] P. 163.

84. *Add. Annotations :*—**Mentd.** Lexden & Winstree Union *v.* Windsor Union, [1921] 2 K. B. 143; Wycombe Grdns. *v.* Barton-upon-Irwell Grdns. (1926), 13 T. L. R. 89.
After this case add the following cross-reference: *See, further*, JUDGMENTS, Vol. XXX., pp. 203 *et seq.*

162a. —— **Right of junior counsel settling pleadings to lead another junior counsel.**]—A member of the Outer Bar settled pleadings & led at trial. Another member of the Outer Bar was briefed to attend trial as his junior. On party & party taxation the taxing master disallowed the fees paid to the second counsel on the ground that the junior who settled the pleadings could not lead, but could be led by a senior either of the Outer or Inner Bar:—*Held:* junior counsel who settled pleadings could lead another junior counsel, & fees of both counsel should be allowed.—DOUGLAS *v.* ASSOCIATED NEWSPAPERS, LTD. (1922), 67 Sol. Jo. 48.

184. *Add. Annotation :*—**Mentd.** Turner *v.* Kingsbury Collieries, [1921] 3 K. B. 169.

207. *Add. Annotation :*—**Mentd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508.

216. *Add. Annotation :*—**Mentd.** Smith *v.* Smith &

220a. —— **Of junior counsel—Proportionate to fee of leader.**]—A junior counsel is entitled to be allowed two-thirds of the fee allowed to his leader & the taxing master has no power to direct that the amount of the fee of junior counsel on the hearing before the master in chambers should be deducted from the amount of the fee allowed on the adjourned hearing before the judge in ct., on the ground that the brief was practically the same on each occasion.—*Re* PARK, BOTT *v.* CHESTER (1921), 66 Sol. Jo. (W. R.) 2.

230. *Add. Annotation :*—**Mentd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

234. *Add. Annotation :*—**Mentd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

251. *Add. Annotation :*—**Mentd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

281 *Add. Annotation :*—**Mentd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

291 *Add. Annotation :*—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

300. *Add. Annotation :*—**Refd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

312 *Add Annotation :*—**Mentd.** Bosworthick *v.* Bosworthick, [1926] P. 159.

313. *Add. Annotation :*—**Mentd.** Butterworth *v.* Butterworth & Englefield, Collins *v.* Collins & Harrison, Barratt *v.* Barratt & Fox, Howell *v.* Howell & Walker, Adams *v.* Adams & Ward, Ellworthy *v.* Ellworthy & Ledgard, [1920] P. 126.

323a. **Express instructions given to solicitor.**]—At the hearing of an action for debt counsel for deft. consented to judgment against his client for part only of the claim, pltf. abandoning the balance. Without the knowledge of counsel on either side, or of the solrs. for pltf., deft. had given instructions to her solrs. that the case was not to be settled. Upon an application made before the judgment was drawn up:—*Held:* the case must be restored

SECT. 1, SUB-SECT. 1.

b l. *Nature of duties de*

nuder Law Society Act, now R. S. O., 1914, c. 167 *is* not a matter of mere

, having to do with the well of the society in maintaining the which should prevail in the ession; &, unless in a

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of powers.—HALL *v.* (1. L. R. 147. CAN.

SECT. 1, SUB-SECT. 2.—A.

11 ll. (1905)

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& LAW SOCIETY OF 31 B. C. R. 75. CAN.

SECT. 2, SUB-SECT. 7.—A.

What constitutes.] - *Held:* applt., who had been called to the Bar more than five years, but had never practised as a barrister, was a "barrister of not less than five years' standing" within the meaning of Industrial Arbn. Act, s. 6 (7). MCCAWLEY *v.* R. (1918), 26 C. L. R. 9. **AUS.**

SECT. 3, SUB-SECT. 1.—A.

g. For "IR," at the end of this "SIERRA LEONE."

. *For conviction for perjury in in England—court.*]—

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in this —*Re* AN ADVOCATE 1. L. R Mad. 903.—**IND.**

SECT. 5, SUB-SECT. 2.

sd. "*Normal*" *fees—Fees in*

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DONIAN RY. CO. *v.* GREENOCK CORPN., GLASGOW & SOUTH WESTERN RY. CO. *v.* SAME, [1922] S. C. 299.—**SCOT.**

SECT. 5, SUB-SECT. 6.

274 i. *Misconduct—Inserting libel on ge in notice of appeal—On instruc- is of client.*]—*Held:* this conduct was highly improper.—JACOB & CO. *v.* RASH BEHARI GHOSE (1920), I. L. R. 47 Calc. 823.—**IND.**

SECT. 5, SUB-SECT. 7.—C. (b) i.

i.

present without
CHAUDHURI *v.* KEDAR NATH DAGA (1922), I. L. R. 1 Pat. 489.—**IND.**

300 iv. ——.]—A settlement within apparent general authority of :—*Held:* binding.—B. N. SEN & BROTHERS *v.* CHUNI LAL DUTT & CO. (1923), I. L. R. 51 Calc. 385.—**IND.**

301 i. *Authority to compromise out*].]—A compromise effected by of his client out of ... d to by his client, is only binding upon the client if it is l or by the client or by his in that behalf.- *v.* EAST INDIAN RY. CO. I. L. R. 51 Calc. 896.—**IND.**

to the list for hearing.—SHEPHERD *v.* ROBINSON, [1919] 1 K. B. 474; 88 L. J. K. B. 873; 120 L. T. 492; 35 T. L. R. 220, C. A.

324. *Add. Annotation* :—**Distd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

326. *Add. Annotation* :—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

331. *Add. Annotation* :—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

335. *Add. Annotation* :—**Reld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

356a. **Whether binding at second trial.**]—A man was employed by a railway co. to sweep their yard & goods warehouse. Several lines of rails ran through the yard, & it was his duty to sweep between the lines, but to stand clear of them when trucks were being run over them. On June 10, 1918, a capstan man in the employ of defts. gave notice to the man that he was going to run trucks into the yard, which notice the man acknowledged. The first truck was sent in, & the capstan man stated that he saw the man apply the brake to it, which was not a part of his duty, & then leave the yard. A second truck was then sent down on another line, & shortly afterwards the man was found sitting on the ground, having sustained injuries from which he died. Upon a claim by his widow for compensation under Workmen's Compensation Act, 1906 (c. 58), an admission was made by counsel at the trial that "deceased was crushed between two waggons & sustained abdominal injury from which he died." A new trial having been ordered :—*Held* : the above admission was not to be binding at the second trial.—DAWSON *v.* GREAT CENTRAL RY. CO. (1919), 88 L. J. K. B. 1177; 121 L. T. 263; 12 B. W. C. C. 163, C. A.

375. *Add. Annotation* :—**Mentd.** Eastern Shipping Co. *v.* Quah Beng Kee, [1924] A. C. 177.

381. *Add. Annotation* :—**Mentd.** R. *v.* Minister of Labour, [1924] 2 K. B. 210.

382. *Add. Annotation* :—**Mentd.** Rhondda's Claim, [1922] 2 A. C. 339.

383a. **Duty to assist court—By citing all relevant authorities.**]—Upon the hearing of an appeal in the House of Lords, it is the duty of counsel to bring to the attention of the House any authority, statutory or other, within their knowledge which bears one way or the other upon the matters under debate, irrespectively of whether or not the particular authority assists the case of the party who is aware of it. It is likewise the duty of those who instruct counsel, if they are aware of any such authority, to bring it to the attention of counsel, in order that they in turn may bring it to the attention of the House.—GLEBE SUGAR REFINING CO., LTD. *v.* GREENOCK PORT & HARBOURS TRUSTEES, [1921] 2 A. C. 66; 125 L. T. 578; 37 T. L. R. 436; 65 Sol. Jo. 551, H. L.

383b. **Duty to disclose adultery of petitioner in suit for dissolution of marriage.**]—Where a petitioner has committed adultery it is the duty of his counsel & solr. to disclose the fact to the ct. if th y are aware of it.—ABRAHAM *v.* ABRAHAM & HARDING (1919), 120 L. T. 672; 35 T. L. R. 371; 63 Sol. Jo. 411.

Disclosure of petitioner's adultery in suits for dissolution of marriage generally, *see* HUSBAND & WIFE.

408a. —— ——.]—PRACTICE NOTE, [1920] W. N. 34.

421. *Add. Annotations* : **Mentd.** Sage *v.* Eicholz, [1919] 2 K. B. 171; Valentine *v.* Hyde, [1919] 2 Ch. 129.

421a. —— ——.] The House of Lords has a prior claim to the attendance of counsel over other cts., & before absenting himself counsel ought to have made an application for leave to be absent.—ABRAM S.S. CO. *v.* WESTVILLE SHIPPING CO. (1923), as reported in 67 Sol. Jo. 535, H. L.

446. *Add. Annotations* :—**Mentd.** The Christel Vinnen, [1924] P. 61; Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522; Reed *v.* Page & East (1926), 42 T. L. R. 744.

453. *Add. Annotations* :—**Reld.** Banbury *v.* Bank of Montreal, [1918] A. C. 626; Wilson *v.* United Counties Bank, [1920] A. C. 102. **Mentd.** Yorke *v.* Yorkshire Insce., [1918] 1 K. B. 662; Yorkshire Insce. *v.* Craine, [1922] 2 A. C. 541.

467. *Add. Annotation* :—**Mentd.** Evans *v.* Heathcote, [1918] 1 K. B. 418.

SECT. 5, SUB-SECT. 7.—C. (b) iv.

334 ii. ——.]—Where the advocate for one of the parties in a proceeding for the grant of letters of administration under a misapprehension consented to the other party being granted the letters :—*Held* : if such consent was given without instructions the client might withdraw the consent at any time prior to the actual issue of letters.—KYONE HOK TSEE *v.* KYON SOON SUN (1925), I. L. R. 3 Ran. 261.—**IND.**

SECT. 5, SUB-SECT. 10.

i. ——.]—In an action for breach of
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SECT. 6, SUB-SECT. 1.

383 i. —— *Should not make charges.*]—Members of the
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acting in the administration of justice.
Re DIVARKA PRASAD MISRAL (1923), I. L. R. 46 All 121. **IND.**

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SECT. 6, SUB-SECT. 5.

ii. —— ——.) *Re*

BASTARDY.

Part I.—The Presumption of Legitimacy.

2. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Warren *v.* Warren, [1925] P. 107.

3. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Farman *v.* Farman (1924), 40 T. L. R. 823.

4. *Add. Annotations :*—**Consd.** Mart *v.* Mart, [1926] P. 21. **Mentd.** Russell *v.* Russell, [1924] A. C. 687.

5. *Add. Annotation :* **Mentd.** Brown *v.* Leech (1924), 88 J. P. 208.

6. *Add. Annotation :* **Mentd.** Russell *v.* Russell, [1924] A. C. 687.

10. *Add. Annotation :* **Mentd.** *Re* Wright, Hegan *v.* Bloor, [1920] 1 Ch. 108.

11. *Add. Annotation :* **Refd.** Gaskill *v.* Gaskill, [1921] P. 425.

12. *Add. Annotations :* **Refd.** Gaskill *v.* Gaskill, [1921] P. 425; Russell *v.* Russell, [1921] A. C. 687.

17. *Add. Annotations :* **Apld.** Warren *v.* Warren, [1925] P. 107. **Refd.** Russell . Russell, [1924] A. C. 687.

18. *Add. Annotation :* **Mentd.** Brown *v.* h (1924), 88 J. P. 208.

20. *Add. Annotation :*—**Refd.** Andrews *v.* A s & Chalmers (1924), 40 T. L. R. 873.

21. *Add. Annotations :* **Mentd.** Hensley *v.* ley & Nevin (1920), 122 L. T. 811; Pullen *v.* Pullen & Holding (1920), 123 L. T. 203.

22. *Add. Annotations :* **Consd.** Russell *v.* Russell, [1921] A. C. 687; Mart *v.* Mart, [1926] P. 24. **Refd.** Andrews *v.* Andrews & Chalmers (1924), 132 L. T. 400.

. — — — .]— In the absence of evidence to the contrary the presumption of legitimacy does not arise in the case of a child born to a resp. more than nine months after she has obtained, under Summary Jurisdiction Married Women's Act, 1895 (c. 39), an order that she be no longer bound to cohabit with . *C.* ANDREWS & CHALMERS, [1924] P. 255; 93 L. J. P. 137; 132 L. T. 400; 40 T. L. R. 873.

Refd. Mart *v.* Mart, [1926] P. 21.

22b. **l of separation — Presumption of nonss.**]— The legal presumption of access, & of the legitimacy of a child born during marriage, is rebutted by its conception during a period when the spouses are living apart under a deed of separation. For this purpose a deed of separation has the same effect as an order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), that the wife shall not be bound to cohabit with her husband, or a judicial separation.—MART *v.* MART, [1926] P. 24; 95 L. J. P. 29; 134 L. T. 446; 42 T. L. R. 253.

25. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Farman *v.* Farman (1921), 40 T. L. R. 823.

28. *Add. Annotation :*— **Refd.** Russell *v.* Russell, [1924] A. C. 687.

35. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Warren *v.* Warren, [1925] P. 107.

36. *Add. Annotations :*— **Apld.** Best *v.* Best & McKinley, [1920] P. 75; *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 281.

40. *Add. Annotations :* **Mentd.** Brown *v.* Leech (1921), 88 J. P. 208; Russell *v.* Russell, [1921] A. C. 687.

42. *Add. Annotations :*—**Consd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115. **Mentd.** Farman *v.* Farman (1924), 40 T. L. R. 823.

43. *Add. Annotation :*— **Refd.** Gaskill *v.* Gaskill, [1921] P. 425.

43a. — — — — — — — — — — .]—When adultery is to be inferred solely from the length of gestation of a child *in utero*, & evidence adverse to the wife, its mother, as regards her conduct, is absent, the same considerations apply as in a case of legitimacy & the presumption thereof. In such a case the evidence to negative lawful access as the cause of pregnancy must be strong, distinct, satisfactory, & conclusive, & must not consist of a mere balance of probability. If on medical evidence there is no distinct & inherent impossibility of access by the husband which could account for the birth of a child, the wife cannot be found guilty of adultery.—GASKILL *v.* GASKILL, [1921] P. 425; 90 L. J. P. 339; 126 L. T. 115; 38 T. L. R. 1.

Annotation : **Refd.** Russell *v.* Russell, [1924] A. C. 687.

44. *Add. Annotation :* **Mentd.** Russell *v.* Russell, [1924] A. C. 687.

46. *Add. Annotation :* **Refd.** Warren *v.* Warren, [1925] P. 107.

49. *Add. Annotations :* **Apld.** Gaskill *v.* Gaskill, [1921] P. 425. **Refd.** Russell *v.* Russell, [1924] A. C. 687.

PART I. SECT. 2.

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& 35 O. L. R. 272
CAN.

7 vi. — — — *Wife divor* woman.]—Where a Hindu woman v married to S. in Oct. 1903, was divor by him in June 1904, married T. July birth to a son in Sept.

to her at any time n the son could the son should be held to be the legitimate son of T.—SETHU *v.* PALAIN (1925), 1 L. R. 49 Mad. 553.—IND.

14 i. — — — — *Even where wife adulteress.*] *Re* BROWN & ARCHER, [1925] 3 D. L. R. 873; 37 O. L. R. 297.—CAN.

sg. *Child of Chinese resident in Straits Sup*
o inherit equally with children by the "t 'sal" (primary wife).—KHOO HOOI LEONG *v.* KHOO KWEE, [1926] A. C. 529; 95 L. J. P. C. 94; 135 L. T. 170.—**STRAITS SETTLEMENTS.**

PART I. SECT. 3.

49 iii. — — *Illicit intercourse with*
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that the child was
r. it must be taken that
as the father.—KUKO *v.* RACZSKI (1921), 67 D. L. R. 46; 51 O. L. R. 225.—CAN.

54. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Warren *v.* Warren, [1925] P. 107.

56. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

57. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

58. *Add. Annotations :*— **Consd.** Russell *v.* Russell, [1924] A. C. 687. **Distd.** Holland *v.* Holland, [1925] P. 101. **Refd.** Warren *v.* Warren, [1925] P. 107.

59. *Add. Annotation :*—**Refd.** Warren *v.* Warren, [1925] P. 107.

60. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687. **Refd.** Brown *v.* Leech (1921), 88 J. P. 208.

61. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

63. *Add. Annotation :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687.

64. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

65a. —— —— ——.]—Resp., A. L., a married woman, living at all material times in London apart from her husband, preferred a complaint against applt. alleging that he was the father of her bastard child. Evidence was given by two independent witnesses that at all material times one F. L., was living in Cardiff. Resp. alone identified F. L. as her husband: *Held:* apart from resp.'s identification, there was no evidence of non-access by the husband, & since *Russell* v. *Russell*, No. 70a, *post*, such evidence could not be given by the wife.—BROWN *v.* LEECH (1924), 91 L. J. K. B. 48; 132 L. T. 205; 88 J. P. 208; 41 T. L. R. 89, D. C.

65b. —— —— —— **Child still-born.**]—The rule laid down by the House of Lords in *Russell v. Russell*, No. 70a, *post*, that evidence of non-access by the husband or wife cannot be admitted where the result may be to bastardise a child, does not include a still-born child.—HOLLAND *v.* HOLLAND, [1925] P. 101; 94 L. J. P. 61; 133 L. T. 318; 41 T. L. R. 431.

65c. —— —— ——.]—A wife's admission that she had committed adultery, even if accompanied by a statement of her belief that a child subsequently born, was the result of the adultery, cannot bastardise the child without evidence of the non-access of the husband. The confession of the wife, therefore, that she had committed adultery is admissible as evidence in a suit for divorce so long as she does not assert that the husband could have had no access at the time of conception.—WARREN *v.* WARREN, [1925] P. 107; 94 L. J. P. 68; 133 L. T. 352; 41 T. L. R. 599; 69 Sol. Jo. 725.

66. *Add. Annotation :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687.

67. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

68. *Add. Annotations :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687. **Mentd.** Hensley *v.* Hensley & Nevin (1920), 122 L. T. 814.

70. *Add. Annotations :*—**Mentd.** Hensley *v.* Hensley & Nevin (1920), 122 L. T. 814; Gaskill *v.* Gaskill, [1921] P. 425.

70a. —— —— ——.]—The rule of law that neither a husband nor a wife is permitted to give evidence of non-intercourse after marriage to bastardise a child born in wedlock applies to proceedings instituted in consequence of adultery, & is not affected by the above sect., which makes the parties to such proceedings, & the husbands & wives of such parties, competent witnesses. RUSSELL *v.* RUSSELL, [1924] A. C. 687; 93 L. J. P. 97; 131 L. T. 482; 40 T. L. R. 713; 68 Sol. Jo. 682, H. L.

Annotations :—**Apld.** Brown *v.* Leech (1924), 94 L. J. K. B. 48. **Consd.** Farman *v.* Farman (1924), 40 T. L. R. 823. **Distd.** Warren *v.* Warren, [1925] P. 107. **Consd.** Mart *v.* Mart, [1926] P. 24. **Refd.** Andrews *v.* Andrews & Chalmers (1921), 132 L. T. 400; Holland *v.* Holland, [1925] P. 101; Selby *v.* Atkins (1926), 135 L. T. 45.

Evidence in matrimonial suits generally, *see* HUSBAND & WIFE.

71. *Add. Annotations :* **Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24. **Refd.** Andrews *v.* Andrews & Chalmers (1921), 132 L. T. 400.

72. *Add. Annotation :* **Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

73. *Add. Annotation :* **Refd.** Russell *v.* Russell, [1924] A. C. 687.

73a. —— —— ——.] Although, as decided in *Russell* v. *Russell*, No. 70a, *ante*, neither husband nor wife can give evidence of non-access, with a view of showing that a child born in wedlock was not a child of the marriage, yet the fact of non-access can be proved by evidence *aliunde*. FARMAN *v.* FARMAN (1924), 40 T. L. R. 823.

75. *Add. Annotation :* **Mentd.** Russell *v.* Russell, [1924] A. C. 687.

76. *Add. Annotations :* **Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24.

79. *Add. Annotation :* **Mentd.** Russell *v.* Russell, [1924] A. C. 687.

80. *Add. Annotations :* **Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24.

81. *Add. Annotations :* **Mentd.** Hensley *v.* Hensley & Nevin (1920), 122 L. T. 814; Gaskill *v.* Gaskill, [1921] P. 425.

82. *Add. Annotations :* **Mentd.** Hensley *v.* Hensley & Nevin (1920), 122 L. T. 814; Pullen *v.* Pullen & Holding (1920), 123 L. T. 203.

83. *Add. Annotations :* **Refd.** Holland *v.* Holland, [1925] P. 101; Warren *v.* Warren, [1925] P. 107. **Mentd.** Russell *v.* Russell, [1924] A. C. 687.

85. *Add. Annotation :* **Consd.** *Re* Stellery, Weir *v.* Treasury Solicitor (1926), 134 L. T. 436.

96. *Add. Citation :* — *previous proceedings* (1861), 2 Sw. & Tr. 465.

PART I. SECT. 4.

56 vii. —— ——.]—The evidence of a man & his wife, given for the purpose of bastardising a child born during wedlock, & at a time consistent with lawful conception, is not admissible. *Re* BROWN & ARGUE, [1925] 3 D. L. R. 573; 57 O. L. R. 297.—CAN.

56 viii. —— —— ——.]—A husband sued his wife for divorce on the ground of adultery, which she denied. The wife had given birth to a child, of which the husband alleged that he was not the father. The husband gave evidence of non-access. The birth had been registered by the wife, who gave the name of a man other than her husband as its father:—*Held*, (1) the husband's evidence as to non-access was inadmissible; (2) the registration of the child's birth by the wife did not throw the *onus* upon her of proving that the child was not an adulterine child, but the *onus* of proof remained upon the husband.—THOMAS *v.* THOMAS, [1926] App. D. 47.—S. AF.

Part II.—Mode of Determining Question of Legitimacy

111. For "a person who has no interest in opposing a petition will not be cited," read "a person not cited, who has no real interest in opposing a petition for a declaration of legitimacy, will not be allowed to intervene."

Add. Citation :—1 New Rep. 107, 378.

114. *Add. Annotations :*—**Mentd.** Young *v.* Grierson, Oldham (1924), 41 R. P. C. 548; R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

118. *Add. Annotations :*—**Mentd.** *Re* Letters Patent No. 139207, *Re* Carbonit Akt., [1924] 2 Ch. 53; R. *v.* Copestake, *Ex p.* Wilkinson (1926), [illegible]

120. *Add. Annotations :*—**Mentd.** A.-G. *v.* Cory, Kennard *v.* Cory (1919), 88 L. J. Ch. 410; Companie Martiartu *v.* Royal Exchange Assce. Corpn. (1923), 92 L. J. K. B. 546.

121. *Add. Annotation :*—**Apld.** Rutter *v.* Rutter, [1921] P. 136.

129. *Add. Annotations :*—**Mentd.** Hensley *v.* Hensley & Nevin (1920), 122 L. T. 814; Pullen *v.* Pullen & Holding (1920), 123 L. T. 203.

130. *Add. Annotation :*—**Mentd.** Keyes *v.* Keyes & Gray, [1921] P. 204.

Part III.—Legitimation by Subsequent Marriage.

132. *Add. Annotations :*—**Mentd.** Casdagli *v.* Casdagli, [1919] A. C. 145; Eustace *v.* Eustace, [1921] P. 45; *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; A.-G for Alberta *v.* Cook, [1926] A. C. 444.

153. *Add. Annotation :*—**Mentd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

Part IV.—Legal Position of Bastard.

157. *Add. Annotation :*—**Consd.** *Re* Phillips, *Re* Howard, Charter *v.* Ferguson, [1919] 1 Ch. 128.

161. *Add. Annotations :*—**Mentd.** Casdagli *v.* Casdagli, [1919] A. C. 145; Eustace *v.* Eustace, [1921] P. 45; *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

162. *Add. Annotation :*—**Mentd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

168. *Add. Annotation :*—**Mentd.** R. *v.* A.-G. of British Columbia, [1924] A. C. 213.

183. *Add. Annotation :*—**Mentd.** Boyce *v.* Wasbrough, [1922] 1 A. C. 425.

195. *Add. Annotation :*—**Mentd.** *Re* Dawson. Swainson *v.* Dawson, [1919] 1 Ch. 102.

Part V.—Rights and Liabilities towards the Bastard.

207. *Add. Annotation :*—**Mentd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

226. *Add. Annotation :*—**Mentd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

PART II. SECT. 2. SUB-SECT. 1.

sk. *of court.*]—*Held* : Act, 1858 the to legitimacy upon tion for [illegible] G., [1922] 1 W. W. R. 978; D. L. R. 365; 17 Alta. L. R. 473. CAN.

PART III. SECT. 1.

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fe. in E W. went to when twenty-four years of age, & a domicil in Ontario:— *Held* : W. was legitimate.—*Re* W., 2 D. L. R. 1177; 56 O. L. R. —CAN.

PART IV. SECT. 1.

184 j. *Nullius filius—Extent of* : does not prevail in a ct. of eq. CONNOR, [1919] 1 I. R. 361.—IR.

PART IV. SECT. 2. SUB-SECT. 2.—A. (b).

167 ll. —— —— *Right of Crown to escheat* [illegible]

Re W., [1925] 3 D. L. R. 1177; O. L. R. 611.—CAN.

PART V. SECT. 1.

2 Vict. c. 56, s. 53, imposed an obligation on the father to support & maintain an infant illegitimate son, which obligation the father was willing to fulfil, & had fulfilled until prevented er was *primd* y of the child. [22] 1 I. R. 148.—IR.

205 vi a. —— —— —— ——.]— WALTER *v.* CULBERTSON, [1921] S. C. 490; 58 Sc. L. R. 401.—SCOT.

: a parent should not be de of the custody of an infant it is shown that the or deserted it, or that his conduct has been such as to him to custody, or that he has allowed it to be brought up by another person at that person's expense.—*Re* P., [1922] 1 W. W. R. 853; 63 D. L. R. 430; 17 Alta. L. R. -CAN.

sm. "*Ne*— An illegitimate child whose mother unable to maintain it is a "neglected child" within Children's Protection Act for by a third party.— S. (1919), 45 O. L. R. 46.—CAN.

PART V. SECT. 3.

227 ii. —— —— —— of the father of a legitimate child, if he has not waived or forfeited his right by conduct, the ct. will allow his wishes on religion to control the faith of the child, even after his death, but, in the case of the mother of an illegitimate child, will only do so so long as she is —, & the obligation to support the child remains. Where special facts nullify or negative the application of any rule of law or practice compelling the ct. to yield to the wishes of a parent

241a. —— Permanent maintenance.] — (1) A judgment recognising the right of an illegitimate child to perpetual maintenance against the putative father & his estate, is contrary to public policy.

(2) The right to a posthumous affiliation order is a cause of action unknown in England.

MACARTNEY, MACFARLANE *v.* ——, [1921] 1 Ch. 522; 90 L. J. Ch. 314; 124 L. T. 658; 65 Sol. Jo. 435.

ation :—Generally, **Mentd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

251. *Add. Annotation :*—**Mentd.** Scott *v.* Pattison, [1923] 2 K. B. 723.

Part VI. Affiliation Proceedings and Kindred Proceedings under Colonial Statutes.

259. *Add. Annotations :*—**Distd.** Boyce *v.* Cox, [1922] 1 K. B. 149. **Mentd.** Grocock *v.* Groocck, [1920] 1 K. B. 1.

262. *Add. Annotation :*—**Distd.** Boyce *v.* Cox, [1922] 1 K. B. 149.

262a. —— —— Under separation order.]—An unmarried woman was delivered of a child. The putative father made payments for its maintenance within twelve months. Subsequently the mother married another man, who maintained the illegitimate child till the mother obtained a separation order on the ground of his cruelty. No provision was made in the order for maintenance of the illegitimate child :—*Held :* the mother was a "single woman" within 1872 Act, s. 3, the effect of a separation order being to confer on her the status of a *feme sole*.—BOYCE *v.* Cox, [1922] 1 K. B. 149; 91 L. J. K. B. 122; 126 L. T. 254; 85 J. P. 279; 38 T. L. R. 51; 66 Sol. Jo. 142; 20 L. G. R. 686; 27 Cox, C. C. 139, D. C.

263. *Annotations :*—For "R. *v.* Suffolk JJ. (1884), 12 J. P. 420" read "R. *v.* Suffolk JJ. (1848), 12 J. P. 426."

Add. Annotations :—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208. **Mentd.** Russell *v.* Russell, [1924] A. C. 687.

264. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

267. *Add. Citation :*—26 Cox, C. C. 129.

274a. —— After death of father.]—*Re* MACARTNEY, MACFARLANE *v.* MACARTNEY, No. 241a, *ante*.

278a. —— ——.]—(1) A woman who was with child went to stay at the house of her sister, who lived in a different petty sessional division from that in which the woman usually resided. The woman went home to be confined, & fourteen days after the birth of her child she went back to her sister & stayed with her for a month. Eight days after the commencement of this visit the woman applied to a justice of the peace acting for the petty sessional division of the place where her sister resided for a summons against the man alleged by her to be the father of her child :—*Held :* the woman resided in that petty sessional division within 1872 Act, s. 3, so as to give the justices of that petty sessional division jurisdiction to make an affiliation order against the putative father, as that sect. did not require that the application should be made to a justice of the peace acting for the petty sessional division of the place where the woman usually or permanently resided.

(2) Where an affiliation order has been made which is not appealed against, or where there has been an appeal to quarter sessions against the order & the appeal has been dismissed, & subsequently an application is made to justices to enforce the order by the issue of a distress warrant, the justices have no jurisdiction to enter into any inquiry as to the validity of the original order. R. *v.* LANCASHIRE JJ., *Ex p.* TYRER, [1925] 1 K. B. 200; 94 L. J. K. B. 331; 132 L. T. 38; 89 J. P. 17; 41 T. L. R. 103; 69 Sol. Jo. 191; 23 L. G. R. 32; 27 Cox, C. C. 711, D. C.

280. *Add. Annotation :*—**Refd.** R. *v.* Lancashire JJ., *Ex p.* Tyrer (1924), 88 J. P. Jo. 701.

285. *Add. Annotation :*—**Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

293. *Add. Annotation :*—**Apld.** Williams *v.* Lethoren, [1919] 2 K. B. 262.

as to the religion of a child, the ct. is bound solely to pay regard to the welfare of the child.—*Re* CONNOR, [1919] 1 I. R.

PART V. SECT. 4.

1. —— —— *Child born ! Children of Unmarried Parents* 1921 (*Ont.*) (*c.* 54).]—*Held :* the father is not liable to be prosecuted.—R. *v.* O'DONNELL (1923), 39 Can. Crim. Cas.

PART VI. SECT. 1.

an. *Birth before passing of Children of Unmarried Parents Act*, 1923 (*c.* 50) .]—The above Act applies, where are complied with, to a child born before the Act was passed or came into operation.—ANDERSON *v.* SEKOKA, [1925] 2 D. L. R. 488; [1925] 1 W. W. R. 1019; 21 Alta. L. R. 160; *affd.* [1925] 1 W. W. R. 543.—CAN.

ap. *Birth outside Alberta— of Unmarried Parents Act*, 1923 (*c.* —MUNRO *v.* LE HAM, [1925] 2 D. L. R. 604; [1925] 1 W. W. R. 1113; 21 Alta. L. R. 75.—CAN.

PART VI. SECT. 2.

st. *Who may lay complaint—Children of Unmarried Parents Act*, 1923, (*c.* A.).]—The deputy A.-G. of may authorise another person to for the Superintendent of Neglected & Dependent Children in laying a t under the above Act. ication may be sufficiently by telegram.—MUNRO *v.* LEHAM, [1925] 2 D. L. R. 604; [1925] 1 W. W. R. 1113; 21 Alta. L. R. 75.—CAN.

a i. —— ——.]—Where the affidavit filed by the mother stated that he father of the child, not father" as required by Children of Unmarried Parents Act, s. 26 :—*Held :* the omission of the word "really" was fatal, & the action should be dismissed.—LANCASTER *v.* VARDIAN (No. 2) (1924), 33 B. C. R. 440.—CAN.

PART VI. SECT. 4.

317 xii. Add "*revsd. sub nom.* HUTLEY *v.* WHITE, 23 C. L. R. 381."

317 xii a. —— —— ——.] An isolated instance of familiarity in the presence of a third person & a statement by the putative father when taxed with the paternity of the child that other men besides him could be the father of it, do not amount to corroboration under Infant Life Protection Act, 1907, s. 15, of the evidence of complainant that deft. was the father of her child.—FROST *v.* ALLEN (1919), 15 Tas. L. R. 12. AUS.

317 xxxiiia —— —— ——.] In an action by P. against I. for lying-in & medical expenses & allowance for her illegitimate child, I. denied on oath P.'s allegation of seduction :—*Held :* the corroborative evidence in regard to seduction required must be evidence *aliunde* which was inconsistent with deft.'s innocence.—DU PLESSIS *v.* LEVY (1925), 46 N. L. R. 249.—S. AF.

317 xlv a. —— —— —— ——.]—

318. *Add. Annotation:* —**Refd.** Thomas *v.* Jones, [1920] 2 K. B. 399.

321. *Add. Annotation:*—**Refd.** Thomas *v.* Jones, [1920] 2 K. B. 399.

322. *Add. Annotation:—Generally*, **Refd.** Thomas *v.* Jones, [1921] 1 K. B. 22.

323. *Add. Annotation:* —**Consd.** Thomas *v.* Jones, [1921] 1 K. B. 22.

325a. — — — — —.]—Applt. was charged on complaint preferred by resp. with being the father of a bastard child of resp. Applt. was a farmer & a bachelor. Resp. was his housekeeper. On the morning of the birth when resp. was in labour, applt., who had no other female servant, lit a fire for her & took her some tea & brandy. He also sent for the doctor. After the birth he allowed her & the child to remain for five weeks & two days, until June 17, in his house. There was no evidence whether she was sufficiently recovered to have left at an earlier date. Applt. admitted that during those five weeks & two days he never asked resp. who was the father of her child. Resp. in her evidence said that during that time, though she did not fix the date except that it was before June 16, she asked applt. what he was going to do about the child, & he said that there was nothing for him to do but to pay. After resp. had left his house she wrote him a letter charging him with being the father of the child, & asking him if he meant to pay for its maintenance. To that letter he made no reply: —*Held:* the above facts did not afford any evidence corroborating the evidence of resp. in some material particular, as required by 1872 Act, s. 4.—THOMAS *v.* JONES, [1921] 1 K. B. 22; 90 L. J. K. B. 49; 124 L. T. 179; 85 J. P. 38; 36 T. L. R. 872, C. A.

334. *Add. Annotation:* **Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

345. *Add. Citation:* 2 L. M. & P. 130.

366a. **Variation of order—Adjudication of paternity—"Fresh evidence."** On the application of resp., justices made an order adjudging that applt. was the father of her illegitimate child, & ordered him to make her a periodical payment. On a subsequent application by applt. under Criminal Justice Administration Act, 1914 (c. 58), s. 30 (3), to revoke the whole order, he tendered fresh evidence, which went only to show that he was not the father of the child. The justices refused to hear it, holding that they had no power to deal with that part of the order which adjudged the paternity:—*Held:* (1) the justices were right; (2) (AVORY & SHEARMAN, JJ.) there being nothing to show that the evidence tendered was of facts which had occurred since the original hearing, or had come to the knowledge of applt. since the hearing, that evidence was not "fresh evidence" within sect. 30 (3).—COLCHESTER *v.* PECK, [1926] 2 K. B. 366; 95 L. J. K. B. 1038; 135 L. T. 32; 90 J. P. 130; 42 T. L. R. 535; 28 Cox, C. C. 225, D. C.

Annotation:—As to (1) **Folld.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

366b. — — —.]—R. *v.* COPESTAKE, *Ex p.* WILKINSON (1926), 90 J. P. 191; 24 L. G. R. 562, C. A.

367. *Add. Annotations:* —**Refd.** Grocock *v.* Grocock, [1920] 1 K. B. 1. **Mentd.** Jones *v.* Jones, [1924] P. 203.

367a. — **Justices' discretion.**]—Under 1872 Act, s. 4, the magistrate has a discretion as to whether he will grant or refuse an order for payment of arrears due under an affiliation order, but he has no discretion to grant an order for payment of a portion only of the arrears enforceable by law.—GROCOCK *v.* GROCOCK, [1920] 1 K. B. 1; 88 L. J. K. B. 1068; 121 L. T. 466; 83 J. P. 185; 35 T. L. R. 509; 63 Sol. Jo. 627; 17 L. G. R. 623; 26 Cox, C. C. 485, D. C.

Annotation **Refd.** Colchester *v.* Peck, [1926] 2 K. B. 366.

372. *Add. Annotation:* **Mentd.** Marshall *v.* Malcolm (1917), 87 L. J. K. B. 491.

372a. — **Application for warrant—Jurisdiction of justices to question validity of affiliation order.**]—R. *v.* LANCASHIRE JJ., *Ex p.* TYRER, No. 278a, *ante*.

375. *Add. Annotation:* **Consd.** Firman *v.* Royal, [1925] 1 K. B. 681.

379. *Add. Annotations:* —*As to* (1) **Apld.** Grocock *v.* Grocock, [1920] 1 K. B. 1. **Expld.** Colchester *v.* Peck, [1926] 2 K. B. 366.

384. *Add. Citation:* *sub nom.* R. *v.* SMITH, 55 L. J. M. C. 117.

Where reliance is placed upon opportunity of intercourse, that evidence must be supplemented by evidence of circumstances which lead to the inference that it was probable that advantage would be taken of the opportunity.—RUDLEY *v.* WEBB (1916), 22 C. L. R. 381. **AUS.**

317 xlvb. — On the hearing of a complaint under Illegitimate Children's Act, R.S.M., 1913 c. 92), the corroboration of the mother's evidence required to support a filiation order may be supplied, not by mere proof of opportunity of intercourse, but by such proof coupled with the fact that deft. denies circumstances with respect to it which are otherwise proved & innocent in themselves & thereby gives to the proved opportunity a different complexion from what it would have borne had such false statements not been made.—BARTLEY *v.* GAIL, [1925] 3 D. L. R. 585; [1925] 2 W. W. R. 669; 35 Man. L. R. 200. **CAN.**

317 xlvc. — *Failure of defendant to call evidence or give evidence himself.*]—*Held:* deft.'s conduct did not afford corroboration of pltf.'s case.—FADDES *v.* M'NEISH, [1923] S. C. 413. **SCOT.**

317 xlixa. — — —.]—SINCLAIR *v.* RANKIN, [1921] S. C. 933; 58 Sc. L. R. 621. **SCOT.**

PART VI. SECT. 5.

gi. — *No evidence of means of applicant.*]—An order made under Children of Unmarried Parents Act, 1923 c. 50 (Alta.), fixing amounts to be paid by the putative father set aside, where it was made without evidence being adduced as to his means, the expenses incurred by the mother, or the respective abilities of the parents to provide for the child.—ANDERSON *v.* SEBOKA, [1925] 2 D. L. R. 912; [1925] 2 W. W. R. 433; 21 Alta. L. R. 362. **CAN.**

gii. — *Variation of order.*]—Where the mother craved an increase because of the cost of living due to the war:—*Held:* the amount of inlying expenses be unaltered, but decree granted for 4*s.* 6*d.* per week, in name of aliment, permission being granted to deft. to apply to the ct. should a change of circumstances arise.—FORBES *v.* MATTHEW, [1919] S. C. 242; 56 Sc. L. R. 137. **SCOT.**

PART VI. SECT. 7, SUB-SECT. 2.

400 ii. — — — *Irregularity or illegality in proceedings.*]—Illegitimate Children's Act, R.S.S. 1920 (c. 156), s. 10, gives the ct. power at the instance of a putative father to rescind or vary an order. He thus has a means of relief, & *certiorari* may in the discretion of the superior ct. be refused.—DWYER *v.* BULBECK, [1923] 1 D. L. R. 597; 39 Can. Crim. Cas. 162; 16 Sask. L. R. 13; [1922] 3 W. W. R. 391. **CAN.**

yi. — — — *Refusal to vary or rescind order.*]—The magistrate has no discretion to refuse to hear an application, but after hearing it he may refuse to rescind or vary his order. If the magistrate refuses to hear the application, applt. is entitled to a prerogative writ of *mandamus* to compel him to do so.—WHEATLEY *v.* HOWARD, [1923] 3 D. L. R. 288; 2 W. W. R. 942. **CAN.**

yi. — — *Grounds for allowing appeal.*]—On appeal to a county ct. judge from an order of filiation made against deft. in a bastardy case by a stipendiary magistrate, the judge, after rehearing the case, disbelieved the evidence of the mother, who was contradicted in important particulars by independent witnesses, & contradicted her evidence

403a. —— —— New evidence.] —Complainant in an affiliation summons was a married woman who was not living apart from her husband at the material date, & an order on the evidence & on his own admission was made against one M. After the time for appealing against this order had expired, the rule in the present case was obtained on an affidavit by complainant's husband that he had cohabited with complainant at the material date & could have been the father of the child:—*Held:* the question of access or non-access was a question of fact for the justices, from which they were entitled to find that M. was the child's father; the ct. would not, in support of a rule for a *certiorari*, rehear a case upon further evidence on a disputed question of fact, & perform the functions of quarter sessions, to which, owing to lapse of time, an appeal could not be made.—R. v. MARKHAM, *Ex p.* MARSH (1923), 67 Sol. Jo. 518.

403b. —— —— Sufficiency of corroboration. —On a bastardy summons justices, having heard the evidence of the mother & such other evidence as was produced by her & other evidence tendered by the person alleged to be the father, made an order in these terms: "On hearing the complaint & the evidence of complainant & other evidence satisfactorily corroborating in a material particular her evidence & also the evidence tendered by deft., & being satisfied of the truth of the complaint, it is adjudged that deft. is the putative father of the child":—*Held:* the question whether the evidence of the mother was corroborated in some material particular by other evidence to the satisfaction of the justices, was a matter to be decided by the justices &, even if the other evidence did not corroborate the evidence of the mother, the justices had acted within their jurisdiction, & a writ of *certiorari* should not issue to quash their order.—R. v. LANCASHIRE JJ., *Ex p.* BRETT, [1926] 2 K. B. 192; 95 L. J. K. B. 827; 135 L. T. 141; 90 J. P. 119; 28 Cox, C. C. 178, C. A.

before the magistrate, as to the paternity of the child:—*Held:* the appeal the county ct. judge must be ssed.—MULGRAVE v. CLANCEY, 58 N. S. R. 105.—CAN.

d i.—*Under Illegitimate Children's Act, R. S. S.*, 1920 (c. 156).] An order made by a magistrate under s. 5 of the above Act may be varied by him on the application of either of the parties under s. 9, & may be rescinded or varied by him on the pplication of the putative father under s. 10. WHALEY v. HOWARD, [1923] 3 D. L. R. 288; 2 W. W. R. 912. CAN.

BANKRUPTCY AND INSOLVENCY.

Part I.—Bankruptcy Jurisdiction.

4. *Add. Annotations :* —**Refd.** *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149. **Mentd.** Victoria City *v.* Vancouver Island (Bp.), [1921] 2 A. C. 384; Wise *v.* Lansdell, [1921] 1 Ch. 420.

19. *Add. Annotation :*—**Mentd.** R. *v.* Norman, [1921] 2 K. B. 315.

27. *Add. Annotation :*—**Refd.** Bowling *v.* Camp (1922), 128 L. T. 342.

29. *Add. Annotation :* —**Mentd.** *Re* Moss, *Ex p.* Everitt (1923), 93 L. J. Ch. 98.

40a. — — — — **How derived.**] — *Re* PRIOR, *Ex p.* PRIOR, No. 1518a, *post*.

60. *Add. Annotations :* — **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67; *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 811.

134. *Add. Annotation :*—**Mentd.** Bickerdike *v.* Lucy, [1920] 1 K. B. 707.

161. *Add. Annotation :*—**Mentd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 91.

163. *Add. Annotation :*—**Mentd.** The Joannis Vatis (1921), 15 Asp. M. L. C. 506.

197. *Add. Annotation :*—**Mentd.** Whitney *v.* I. R. Comrs. (1925), 42 T. L. R. 58.

199. *Add. Annotation :*—**Mentd.** Victoria City *v.* Vancouver Island (Bp.), [1921] 2 A. C. 384.

224. *Add. Annotation :* **Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

226. *Add. Annotation :* **Apld.** *Re* L. A. & B. F.M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

226a. — —] In the absence of debts actually enforceable against them infants cannot be made bkpt., even on their own petition.—*Re* A. & M., [1926] Ch. 274; 70 Sol. Jo. 607; *sub nom. Re* L. A. & B. F. M., *Ex p.* OFFICIAL RECEIVER *v.* THE DEBTORS, 95 L. J. Ch. 258; 134 L. T. 530; [1926] B. & C. R. 10, D. C.

230. *Add. Annotations :*—**Apld.** *Re* A. & M., [1926] Ch. 274. **Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913; *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120. **Mentd.** *Re* A Debtor, [1922] 2 K. B. 109.

235. *Add. Annotation :*—**Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

263. For "*Held :* she was subject . . . under 1883 Act, s. 24" read, "*Held :* such power of appointment was not separate property within Married Women's Property Act, 1882, s. 1 (5), & she could not be directed to appoint to her trustee in bkpcy. under 1883 Act, s. 24."

Add. Annotations :—**Refd.** *Re* Armstrong, *Ex p.* Boyd (1888), 21 Q. B. D. 264; *Re* Mathieson (1926), 70 Sol. Jo. 1161.

267. *Add. Annotations :*—*As to* (1) **Apld.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689. **Refd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

274a. ——— **What is—Professional artiste producing scena.**] — *Re* A DEBTOR (No. 23 of 1926) (1926), 135 L. T. 689, C. A.

285. *Add. Annotation :*—**Consd.** Food Controller *v.* Cork, [1923] A. C. 617.

286. *Add. Annotations :*—**Consd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369. **Refd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508.

297. *Add. Annotation :*—**Mentd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

321. *Add. Annotation :*—**Mentd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

331. *Add. Annotation :*—**Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

333. *Add. Annotation :* — **Apld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

336. *Add. Annotation :*—**Mentd.** *Re* Whaley, *Ex p.* Official Receiver, [1921] 2 K. B. 623.

385. *Add. Annotation :*—**Mentd.** Whitney *v.* I. R. Comrs. (1925), 42 T. L. R. 58.

PART I. SECT. 1.

4 ii. — —] — IMPERIAL BANK OF CANADA *v.* BARBER, [1921] 20 O. W. N. 282; 59 D. L. R. 523, 1 C. B. R. 485. —**CAN.**

20 ii. — — — —] — Bkpcy. Act applies to debts & contracts, including leases, existing when it came into force. — *Re* MCKAY (1921), 51 O. L. R. 86; 2 C. B. R. 59; 64 D. L. R. 699. —**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

121 ii. — — — — *Debts of former business unpaid.*] — A person who ceases to carry on his business & becomes a farmer is not a person "engaged solely in farming," etc., so long as his debts in connection with his former business remain unpaid. He must be deemed to be still carrying on that business until all the debts are paid, & he is not protected by Bkpcy. Act, s. 8 (1).—*Re* GARTRELL, *Ex p.* KEARNS, [1923] 3 D. L. R. 406; [1923] 2 W. W. R. 855; 4 C. B. R. 103.—**CAN.**

PART I. SECT. 3, SUB-SECT. 6.

267 i. *Carrying on business.*]—It is only in cases where a married woman carries on a trade or business that she is subject to Bkpcy. Act, 1919 (c. 36) (Can.).—*Re* STONE, [1925] 4 D. L. R. 518.—**CAN.**

PART I. SECT. 3, SUB-SECT. 7.

sa. *Assignee of debt—Assigned by debtor with consent of creditor.*]—*Re* STAR FLOORING CO., [1924] 3 D. L. R. 269; 4 C. B. R. 679.—**CAN.**

PART I. SECT. 4, SUB-SECT. 1.

c i. *To deal with prosecution of fraudulent debtors.*] — Under Bkpcy. Act, s. 93, the prosecution may be ordered & proceeded with in the ordinary way before the existing criminal cts. It does not require the judge in bkpcy. to hear evidence &, if he thinks fit, to commit accused to stand trial although under sect. 95 the judge in bkpcy. has a right to do so.—R. *v.* GOLDHAMMER, [1924] 3 D. L. R. 1007; Q. R. 36 K. B. 507; 5 C. B. R. 127.—**CAN.**

sb. *Under Bankruptcy Act, 1919 (c. 36)—To order stay of execution—Until receiving order dealt with.*]—*Held :* the ct. had such power.—*Re* THOMPSON POWDER CO., *Re* WINDING-UP ACT, [1923] 1 D. L. R. 496; 3 C. B. R. 181.—**CAN.**

sc. *To order repayment of money—Paid by assignee to creditor—Mistake of law.*]—*Held :* jurisdiction could not be excluded by a plea of payment by mistake of law.—DEMPSEY *v.* PIPER, [1921] N. Z. L. R. 753.—**N.Z.**

PART I. SECT. 4, SUB-SECT. 4.

363 i. ——— *With intent to defeat creditors.*]—If debtor before his bkpcy. pays money fraudulently, with a view to concealing from his creditors his assets, the ct. will order repayment of such money.—*Re* COHEN & SWIGMAN, *Ex p.* ROSENBERG, [1925] 1 D. L. R. 248; 5 C. B. R. 346.—**CAN.**

388. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1922] 2 Ch. 470.

389. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1922] 2 Ch. 470.

389a. —— —— —— ——.]—A debtor cannot avoid the operation of a bkpcy. notice, served upon him in England, by himself during the currency of the notice petitioning for & obtaining an award of sequestration of his estate under Bkpcy. (Scotland) Act, 1913 (c. 20). A receiving order made in pursuance of the bkpcy. notice in England will, therefore, be valid, & cannot be set aside on the ground of the sequestration.—*Re* A Debtor (No. 199 of 1922), [1922] 2 Ch. 470; 91 L. J. Ch. 577; 127 L. T. 832; 38 T. L. R. 683; 66 Sol. Jo. 521; [1922] B. & C. R. 151, C. A.

Part II.—Acts of Bankruptcy.

397. *Add. Annotation :*—**Mentd.** Whitney v. I. R. Comrs. (1925), 42 T. L. R. 58.

409. *Add. Annotation :*—**Consd.** Lipton v. Bell, [1924] 1 K. B. 701.

410. *Add. Annotation :*—**Consd.** Lipton v. Bell, [1924] 1 K. B. 701.

419. *Add. Annotation :*—**Mentd.** The Joannis Vatis (1921), 15 Asp. M. L. C. 506.

421. *Add. Annotation :*—**Reld.** Lipton v. Bell, [1924] 1 K. B. 701.

428. *Add. Citations :*—*sub nom. Re* Phillips, *Ex p.* Phillips, 69 L. J. Q. B. 601; 82 L. T. 691; 44 Sol. Jo. 469; 7 Mans. 277, D. C.

434a. —— —— —— ——.]—An unstamped deed of arrangement, although admissible in evidence to prove an act of bkpcy., cannot, after it has ceased to be available as an act of bkpcy., be put in evidence without a stamp where the fact that the deed is void for want of registration is relied upon by the trustee in a subsequent bkpcy. of the debtor to establish a title to the property comprised in the deed.—*Re* Shaw, *Ex p.* Official Receiver (1920), 90 L. J. K. B. 204; [1920] B. & C. R. 156.

451. *Add. Citation :*—1 Sm. & G. 246, n.; 65 E. R. 106.

454a. —— ——.]—By indenture dated Feb. 21, 1921, made between bkpt., a retired produce broker, of the first part, & B., his solr., of the second part, & S. of the third part, after reciting that a receiving order had been made against bkpt. on Oct. 7, 1920, & B. had lodged a proof for £470 9*s.* 2*d.* for moneys expended & advanced as bkpt.'s solr. up to the date of the receiving order, & that since that date B. had continued to act as bkpt.'s solr., & his bill of costs amounted to £217 10*s.* 1*d.*, & that B. had undertaken to pay to a bank certain moneys due to them by bkpt. on realising his securities, & that there was lodged on behalf of bkpt. the sum of £1,350 with the official receiver to enable him to discharge the provable debts in the bkpcy., debtor assigned to B. so much of the £1,350 as should be payable to bkpt. & £2,050 payable to bkpt. under a certain agreement. B. was to hold the sums assigned to him upon trust, in the first place to pay & discharge all moneys due, or thenceforth becoming due to himself for costs, advances or otherwise, & in the next place to pay & discharge certain alleged debts of bkpt. at X., & lastly to apply the balance for the benefit of S. & her children. On Feb. 3, 1921, the above-mentioned receiving order was rescinded. At the date of the assignment bkpt. was living apart from his wife, to whom he had agreed to pay maintenance at the rate of £10 per week, & judgment had been recovered by H. for £58 6*s.* 11*d.* for the board & lodging of bkpt.'s wife. On Feb. 8, 1921, a writ had been issued by bkpt.'s wife for arrears of maintenance due to her from bkpt. On Feb. 11, 1921, H. issued a bkpcy. notice in respect of her judgment & a petition was filed on Apr. 30, 1921. A receiving order was made on June 3, 1921, & debtor was adjudged bkpt. on June 20, 1921:—*Held :* on the facts the assignment was executed with the intent to defeat & delay creditors, & was therefore fraudulent & void as an act of bkpcy. under 1914 Act, s. 1 (1) (*b*). *Re* Paton, *Ex p.* Trustee, [1922] B. & C. R. 1, C. A.

468. *Add. Annotation :* **Reld.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9.

469. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

471. *Add. Annotations :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515. **Reld.** *Re* Moyle, 867.—**CAN.**

PART I. SECT. 5.

388 xiv. —— *Power of Scottish Court to confirm foreign sequestration & to authorise sale of property in Scotland.*]—A petition was presented by the official receiver appointed by the Ct. of Chile in the sequestration of the estates of a deceased person resident there, craving the ct. to confirm the Chilian sequestration, to authorise petitioner to sell Scottish heritage belonging to deceased's estate, & to authorise petitioner to uplift the proceeds of certain Scottish policies of assurance on the life of deceased. The ct. granted authority to petitioner to sell the Scottish heritage on certain terms, under a declaration that such sale should not operate conversion, & on condition that petitioner should consign the balance of the proceeds in the name of the accountant of ct. to abide the orders of the ct., but refused, as unnecessary, the crave of the petition for authority to uplift the proceeds of the policies of assurance.—Araya v. Council, [1921] S. C. 462; 58 Sc. L. R. 395.—**SCOT.**

PART I. SECT. 7.

o. For "*Order of Canadian Provincial Court—Where good throughout Canada,*" read "*Order of provincial court—Good throughout Union.*"

o 1. —— *No request of other provincial court—Subsequent motion to remedy omission.*]—Where a motion was made without such request, the ct. granted a similar motion, made after such request had been obtained, to remedy the omission.—*Re* Legace & Lepinay, [1922] 3 W. W. R. 284; 70 D. L. R. 167.

PART II. SECT. 1.

sd. *Partner—Retirement more than six months before bankruptcy—Debt incurred during partnership.*]—*Held :* such partner could not be joined as a party in bkpcy. proceedings against the partnership. *Re* Standard Cooperage Co., [1924] 2 D. L. R. 703; 4 C. B. R. 673.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2,—A.

457 i. —— *Transfer of property to near relatives—In return for promissory notes—Not included in statement of affairs.*]—An intent to defraud creditors presumed from the above transfer which took place within six months of the bkpcy.—R. v. Trenier (1921), 62 D. L. R. 479; 37 Can. Crim. Cas. 376.—**CAN.**

Ex p. Trustee, [1924] B. & C. R. 22; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

479. *Add. Annotation :* —**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

488. *Add. Annotation :*—**Refd.** *Re* Prior, *Ex p.* Trustee, [1922] B. & C. R. 1.

501. *Add. Annotation :*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

523. *Add. Annotation :*—**Mentd.** *Re* Mellor, Alvarez *v.* Dodgson, [1922] 1 Ch. 312.

533. *Add. Annotation :*—**Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

544. *Add. Annotation :* —**Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

583. *Add. Annotation :* —**Mentd.** Pole-Carew *v.* Western Counties & General Manure Co., [1920] 2 Ch. 97.

590. *Citations :* —For "21 W. R. 422" read "21 W. R. 402."

595. *Add. Annotation :* **Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

598. *Add. Annotation :* —**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

600. *Add. Annotations : As to* (1) **Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426. *As to* (2) **Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

763. *Add. Annotations :* **Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Mentd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87.

766. *Add. Annotation :* —**Mentd.** R. *v.* Norman, [1921] 2 K. B. 315.

787. *Add. Annotation :* **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

797a. **Creditor who has assented to deed of arrangement—Deed void for want of registration.**]—On June 11, 1921, applt. co. recovered judgment debtor for a certain sum & costs. On Apr. 18, 1922, debtor executed a document in the form of a memorandum of agreement by which he assigned his property to trustees for the benefit of his creditors. The agreement provided (*inter alia*) that it should not be registered either as a composition or deed of arrangement or otherwise & contained a schedule of creditors & their debts. At the date of the agreement there were five bkpcy. petitions pending against debtor by creditors other than applt. co. As a result of negotiations between debtor & the five creditors & in consideration of his entering into the ment of Apr. 18, 1922, the five creditors to the dismissal of their petitions & letters dated Apr. 17, 1922, which were all in the same form, & contained a ment that it was understood that if not intended to register the agreement a deed of arrangement, by which they respectively agreed that so long as debtor complied with the terms of the agreement of Apr. 18, 1922, they would not bring any action against him in respect of their debts or attempt to set aside the . On July 18, 1922, applt. co. a letter of assent in the same terms, which was also dated Apr. 17, 1922, & to hand it over to debtor on receiving from him a promissory note or bill of exchange of a third party for £300. This condition debtor performed. The letter was not, however, handed over to debtor owing to the refusal by him to pay to applt. co. an agreed sum for costs, a term which the ct. held formed no part of the original bargain. Applt. co. subsequently issued a bkpcy. notice against debtor founded on its judgment debt. The registrar set the bkpcy. notice aside on the ground that applt. co. was bound by the agreement contained in the letter signed by it. On appeal :—*Held :* (1) the agreement of Apr. 18, 1922, being a deed of arrangement, was void for want of registration under 1914 (Deeds) Act, & the letter of assent, being an assent to a void instrument, was also itself void ; (2) as debtor & all the creditors who assented to the agreement knew from the terms of the instrument itself & from the statement contained in the letters signed by them that the agreement was void, & there was no representation that the agreement was valid, there was no question of estoppel, & applt. co. was not estopped from issuing the bkpcy. notice.—*Re* A BANKRUPTCY NOTICE, [1924] 2 Ch. 76 ; 93 L. J. Ch. 497 ; 68 Sol. Jo. 458 ; [1924] B. & C. R. 188 ; *sub nom. Re* A BANKRUPTCY NOTICE (No. 62 OF 1924), *Ex p.* PETITIONING CREDITORS *v.* DEBTOR, 131 L. T. 307, C. A.

Annotation :—As to (2) **Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

Compare Nos. 8778a, 8782d, *post*, & original volume, p. 160, No. 1498.

800. *Add. Annotation :* —**Folld.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

800a. **Change in judgment creditor — Judgment obtained by firm — No leave to issue execution.**]—Where a firm consisting of several members has recovered in the firm name judgment against a debtor, the fact that a member has since retired from the firm does not render it necessary that the firm should obtain leave of the ct. under R. S. C., Ord. 42, r. 23, in order that a bkpcy. notice may be issued in the name of the firm, & a bkpcy. petition presented in that name.—*Re* HILL, *Ex p.* HOLT & CO., [1921] 2 K. B. 831 ; 90 L. J. K. B. 734 ; 125 L. T. 736 ; [1921] B. & C. R. 12.

804a. — — — **Notice not good against partners not served.**]—*Re* DEBTORS (No. 807 OF 1922), *Ex p.* DEBTOR, No. 887a, *post*.

811. *Add. Annotation :* —**Consd.** *Re* Debtor (1920), 90 L. J. K. B. 513.

851. *Add. Annotation :*—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

866. *Add. Annotation :* **Consd.** *Re* A Debtor, *Ex p.* Debtor (1922), 92 L. J. Ch. 410.

875. *Add. Citation :* 15 Mans. 304.

Add. Annotation : **Consd.** *Re* A Debtor, *Ex p.* Debtor (1922), 92 L. J. Ch. 410.

875a. — — — **Judgment to pay creditor—Notice to pay registrar of county court.**]—Where a county ct. judgment in form or effect directs it to be made to the creditor the bkpcy.

PART II. SECT. 2, SUB-SECT. 10. A. (g).

" *Held :* the not

PART II. SECT. 2, SUB-SECT. 10.—C. st.

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r to the involved an act of bkpcy. the ct. would assume was a

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notice founded on it properly requires payment to be made to the creditor instead of to the registrar.—*Re* A DEBTOR (No. 16 of 1922), *Ex p.* THE DEBTOR (1922), 92 L. J. Ch. 410; [1922] B. & C. R. 264, D. C.

887a. —— **Partner—Not at principal place of business.**]—Where a judgment has been recovered against a firm, & a bkpcy. notice following the judgment has been served on one member of the firm, but not at the principal place of business of the firm, & a petition presented against the firm, a receiving order cannot be made against the firm other than the partner who was not served.—*Re* DEBTORS (No. 807 of 1922), *Ex p.* DEBTOR (1922), 92 L. J. Ch. 120; [1922] B. & C. R. 119, C. A.

898. *Add. Annotation* :—**Consd.** *Re* Debtor, *Ex p.* Debtor, [1918-19] B. & C. R. 221.

923a. —— **Issue of second notice by same creditor.**] Creditors having obtained judgment issued a bkpcy. notice for £915 & served it on debtors. Debtors paid a sum of £100, including £5 for costs, nine days later, but in the belief that the notice would be disputed the creditors issued & served a fresh notice about two months later for £857, &, that notice not having been complied with within seven days, a petition based on the fresh bkpcy. notice was presented & served. Debtors gave notice of an application to set aside service of the petition, but the registrar refused to do so, & made a receiving order on the fresh bkpcy. notice:—*Held:* (1) debtors could not refuse to comply with the fresh bkpcy. notice on the ground that as the previous notice had resulted in an act of bkpcy. this had put it out of the power of debtors to make any payment in compliance with the fresh notice or otherwise deal with their property; (2) if they did make a payment in compliance with the fresh notice it might be that if a trustee were appointed under the previous bkpcy. notice the payment might be set aside, & the money made available for the general body of creditors.—*Re* DEBTORS (No. 771 OF 1926) (1926), 43 T. L. R. 9; 70 Sol. Jo. 1089.

938. *Add. Annotation:* **Refd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9.

963. *Add. Annotations:*—**Refd.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689. **Mentd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

Part III.—Petition.

1011. *Add. Annotation:*—**Mentd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

1043. *Add. Annotation:*—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

1048. *Add. Annotation:*—**Mentd.** Maskell *v.* Hill, [1921] 3 K. B. 157.

1051. *Add. Annotation:* **Mentd.** McDonald *v.* Nash, [1924] A. C. 625.

1051a. —— A debt to be a good petitioning creditor's debt must be a debt which at the time of the act of bkpcy. could be relied upon to support a bkpcy. petition.—*Re* DEBTORS, [1926] W. N. 201, C. A.

1078. *Add. Annotation:* **Consd.** Giles *v.* Kruyer, [1921] 3 K. B. 23.

1110a. —— **Note given for illegal consideration Bonâ fide holder without notice.**]

PART II. SECT. 2, SUB-SECT. 12.

sg. *Defaults.*]—Defaults more than six months before presentation of a bkpcy. petition followed by demands or payment are not *per se* an act of bkpcy., but when further defaults take place within six months of the petition the whole form one continuing act of bkpcy.—*Re* RAITBLAT, [1925] 3 D. L. R. 116; 5 C. B. R. 765; *affg.*, [1925] 2 D. L. R. 1219; 5 C. B. R. 711.—**CAN.**

sh. *Failure to meet series of promissory notes.*]—*Held:* an act of bkpcy.—*Re* FOX, LESTER *v.* PORTER, [1925] 1 D. L. R. 198; 5 C. B. R. 328.—**CAN.**

sk. *Failure to meet liabilities as they become due.*]—The words "ceases to meet his liabilities as they become due" do not mean that when in any single case debtor makes default in payment of a debt as & when due he commits an act of bkpcy., but a failure " to meet his liabilities as they become " in some wider sense.—*Re* CANADIAN CAP CO., *Ex p.* TRUSTEE, [1924] 1 D. L. R. 817; 53 O. L. R. 506; 4 C. B. R. 185.—**CAN.**

sl. ——.]—The words "ceases to meet his liabilities as they become due" do not include a mere default.—BROWN *v.* KELLY & CO., [1923] 1 W. W. R. 1330; 2 D. L. R. 738; 32 B. C. R. 113.

PART III. SECT. 1, SUB-SECT. 1. A.

b i. ——.]—There is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re* OSMAN (1919), 40 N. L. R. 17. **S. AF.**

b ii. *S. P. Ex p.* GARRETT (1920), 16 N. L. R. 57. **S. AF.**

998 ii. *No evidence when debt accrued. Motion unopposed.*] *Held:* petitioners were entitled to the relief which they claimed.—FISHER *v.* WILKIE, LTD., [1920] 19 O. W. N. 251; 59 D. L. R. 502; 1 C. B. R. 376.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2. A.

1026 ii. ——.] Where there is no privity of contract between the insolvent & the alleged creditor, no debt can exist which may be made the ground for a bkpcy. petition.—*Re* ——— CO., [1924] 2 D. L. R. 508.—**CAN.**

1026 iii. ——

petual debt until the ordinary etc. have settled the disputed question.—*Re* WHISTLE CO., [1922] 1 D. L. R. 1110; 5 C. B. R. 193. **CAN.**

s i. *Held* *before Bankruptcy in connection.*] A receiving order against a co. under the above Act may be based upon a debt owing to the co. by ——

——, the liabilities incurred by a firm —— the Act came into operation.—*Re* STEWART MERCANTILE CO., LTD., [1921] 1 W. W. R. 740; 59 D. L. R. 412; 1 C. B. R. 367. **CAN.**

s ii. *Judgment founded on cause of action partly arising before Act in operation.*] *Held:* such ment was sufficient either as an able act of bkpcy., or as constitut. a debt upon which to found a bkpcy. petition.—*Re* MACVICAR, [1925] 1 D. L. R. 1186; 51 O. L. R. 63; 3 C. B. R. 880.—**CAN.**

s iii. ——.] Such a debt cannot be used as a ground for a bkpcy. petition.—*Re* SUTTON, [1924] 4 D. L. R. 315; 5 C. B. R. 75. **CAN.**

sm. *Debt contracted in pro to which company not licensed to No residential qualification.*] When co. is not licensed to trade in a province & has no assets in that province, the mere fact that members of the co. pro- vince confer on it a nat- ——— commercial qualification ——— a bkpcy. petition to be presented it in that province.—*Re* R. S.) & SON, LTD., [1923] 1 D. L. R. 691; 3 C. B. R. 532. **CAN.**

PART III. SECT. 1, SUB-SECT. 2. C. (a).

1050 iv. ——.] It is sufficient if the ——— 4 D. L. R. 1015.—**CAN.**

Where evidence has been given by a petitioner in support of his claim on a promissory note given for illegal consideration, showing his *bona fides* & want of notice of the illegality of the consideration, & there is no ground for disbelieving him, the ct. will not hold that he has not discharged the *onus* of proof which falls on him to prove the claim, & a receiving order should be made.—*Re* A DEBTOR (No. 4 OF 1922), *Ex p.* PETITIONING CREDITOR, [1922] B. & C. R. 116, C. A.

1115. *Add. Annotation* :—**Mentd.** McDonald *v.* Nash, [1924] A. C. 628.

1175. *Add. Annotation* :—**Dbtd.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 190.

1177a. —— —— ——.]—Where the agent of certain creditors asked the trustee of a deed of assignment by debtor to furnish particulars of the deed, &, later on, wrote to the trustee enclosing the creditors' account, & asking for an acknowledgment of the claim, & after receipt of particulars of the deed, including information that certain of debtor's property was to be sold, stood by for fourteen days, but subsequently presented a petition founded on the deed of assignment :—*Held* : there was sufficient acquiescence by the creditors to preclude them from relying on the deed as an act of bkpcy.—*Re* A DEBTOR, *Ex p.* NEWBURYS, LTD. (1926), 95 L. J. Ch. 199 ; [1926] B. & C. R. 23.

1178. *Add. Annotation* : **Refd.** *Re* A Debtor, *Ex p.* Petitioning Creditors, [1924] B. & C. R. 105.

1179a. —— —— **Attendance at meeting of committee of inspection.**]—About the end of 1922 debtor made an arrangement to pay his creditors in full by instalments, a committee being appointed to watch over his affairs. His trading was not prosperous & new debts were incurred. On Feb. 21, 1924, he executed a deed of assignment for the benefit of his creditors generally & a circular letter with a form of assent was sent to & received by petitioning creditors, who were new creditors. On Feb. 25, 1924, their director with their accountant attended the office of one of the trustees under the deed & suggested that they or some other new creditor should be represented on the committee of inspection. Petitioning creditors were then invited to attend the meeting of the committee on Mar. 26, 1924, & their director & their solr. attended accordingly, discussing & advising on certain matters. Petitioning creditors, however, refused to assent to the deed & presented a petition in bkpcy. grounded upon the execution of the deed as an act of bkpcy. : —*Held* : on the facts, petitioning creditors had so far recognised the deed as to preclude them from availing themselves of its execution as an act of bkpcy.—*Re* A DEBTOR, *Ex p.* PETITIONING CREDITORS (No. 24 OF 1924), (1924), 94 L. J. Ch. 42 ; [1924] B. & C. R. 105, D. C.

1182. *Add. Annotation* :—**Apld.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

1211. *Add. Citation* :—39 L. J. Bcy. 46

1217. *Add. Citation* :—29 W. R. 268.

1253a. —— **Secretary duly authorised to present petition.**]—The secretary of a limited co. was authorised under seal of the co. to present a bkpcy. petition, & at the commencement of the petition had so described himself, but had signed the petition in his own name without any description either before or after his name. Objection being taken on behalf of debtor that the petition was wrongly signed & attested & the consideration for the debt not truly stated, the county ct. registrar dismissed the petition :—*Held* : the petition amply informed debtor who petitioners were, & what the debt was in respect of which they were petitioning ; there was no defect or irregularity &, even if there were, it would come within 1914 Act, s. 147 (1), & the appeal must be allowed & a receiving order made & dated as of the date on which it should have been made in the county ct.—*Re* MARSDEN, *Ex p.* SELLERS (E. H.) & SONS, LTD. (1921), 91 L. J. Ch. 318 ; 126 L. T. 408 ; [1921] B. & C. R. 188, D. C.

1313. *Add. Citation* :—68 L. T. 589.

1347. *Add. Annotation* :—**Consd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1347a. —— ——.]—The registrar in bkpcy. possesses the widest discretion in respect of granting adjournments of the hearing of petitions, the only limit that the law imposes upon him being that he should exercise a judicial discretion.—*Re* A DEBTOR, *Ex p.* PETITIONING CREDITOR (1920), 89 L. J. K. B. 432 ; [1920] B. & C. R. 1, D. C.

1357. *Add. Annotation* :—**Refd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1357a. —— —— **Reasonable prospect of satisfaction of debts.**]—Where a debtor applies for the adjournment of a petition, the ct. should be satisfied that there is a reasonable prospect of the debts being satisfied, & the ct. should be put in possession of every possible information as to the position of debtor, & as to the position of the negotiations which, it is said, will result in obtaining funds for the payment of his debts.—*Re* BOWEN, *Ex p.* THE DEBTOR, [1924] B. & C. R. 32, C. A.

1367a. —— **After receiving order made.**]—A creditor who presented a petition in bkpcy. against debtor failed to disclose a charge which had been given him by debtor some

PART III. SECT. 1. SUB-SECT. 2.- G.

an. *Order for alimony.*]- Upon a petition by a woman for a receiving order against her husband, based upon a failure to pay alimony :- *Held* : the order did not create a debt within Bkpcy. Act, s. 44.- *Re* FREEDMAN, [1924] 3 D. L. R. 517 ; 35 O. L. R. 306 ; 5 C. B. R. 47.—CAN.

PART III. SECT. 1. SUB-SECT. 4.

1202 l. *Within six months—When time begins to run—Ceasing to meet liabilities.*]—Where A. had failed to pay liabilities on their due dates eighteen months prior to the presentation of the bkpcy. petition against him :—*Held* : the mere continuance of the failure to pay the same liabilities could not be said to be an act of bkpcy. occurring within six months before the presentation of the petition. —BROWN *v.* KELLY-DOUGLAS & CO., [1923] 2 D. L. R. 738 ; 32 B. C. R. 143 ; [1923] 1 W. W. R. 1310.—CAN.

PART III. SECT. 3, SUB-SECT. 1.- B.

u i. —— ——.]—All members of the firm must be named in a petition for a receiving order against a partnership.—*Re* CLUFF BROTHERS, [1925] 4 D. L. R. 721.—CAN.

PART III. SECT. 3, SUB-SECT. 2.

1281 i. —— *On partners.*]—All members of the firm must be served with a petition for a receiving order against a partnership.—*Re* CLUFF BROTHERS, [1925] 4 D. L. R. 721.—CAN.

1275 ii. —— *By whom—Solicitor.*]—*Re* X. (1920), 59 D. L. R. 617 ; 1 C. B. R. 439.—CAN.

years previously. The registrar allowed the creditor to amend his petition after a receiving order had been made:—*Held:* apart from amending the petition, it was doubtful whether the receiving order could be set aside on the ground of the omission to state the security; but there was power to amend the petition even after the making of the receiving order.—*Re* A DEBTOR (No. 1507 OF 1921), [1922] 2 K. B. 109; 91 L. J. Ch. 471; 127 L. T. 344; 38 T. L. R. 574; 66 Sol. Jo. 472; [1922] B. & C. R. 9, C. A.

Part IV.—Receiving Order.

1454. *Add. Annotation:*—**Consd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1462. *Add. Annotation:*—**Expld. & Distd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1482. *Citations:*—For "54 L. Jo. 444; 148 L. T. Jo. 178" read "89 L. J. K. B. 40."

1483a. Debtor claiming indemnity—As surety for contingent liability of petitioning creditor.]—Petitioning co., of which debtor was formerly chairman, had lent debtor a large sum of money, & recovered judgment against him (on balance of account) for £2,065. A receiving order was made in the county ct. from which debtor appealed, alleging that he had become surety for the co. for their bank overdraft with a limit of £5,000, & that he was entitled to be indemnified against this liability. No payment had been made by debtor on account of the bank overdraft. At a creditors' meeting the creditors were of opinion that debtor was insolvent & there was no alternative but bkpcy.:—*Held:* on the facts, petitioning creditors' obligation to indemnify debtor as surety in respect of his contingent liability for a debt due from petitioning creditors to a bank did not constitute "sufficient cause" for the dismissal of the petition.—*Re* A DEBTOR (No. 13 OF 1922), *Ex p.* THE DEBTOR, [1923] B. & C. R. 54, C. A.

1494. *Add. Annotation:*—**Apld.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

1496. *Add. Annotation:*—**Reld.** *Re* Debtor, *Ex p.* Debtor, [1918-19] B. & C. R. 221.

1498. *Add. Annotation:*—*Generally*, **Mentd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200.

After this case add "*Compare* No. 797a, *ante*."

1500. *Add. Annotations:*—**Distd.** *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120. **Reld.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913; *Re* A. & M., [1926] Ch. 274. **Mentd.** *Re* A Debtor, [1922] 2 K. B. 109.

1500a. Order against firm "other than" partner not served with bankruptcy notice.]—*Re* DEBTORS (No. 807 OF 1922), *Ex p.* DEBTOR, No. 887a, *ante*.

1508. *Add. Annotations:*—**Apld.** *Re* A Debtor, [1922] 2 K. B. 109. **Consd.** *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120; **Reld.** *Re* A. & M., [1926] Ch. 274. **Mentd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1513. *Add. Annotation:*—**Reld.** *Re* A Debtor, [1920] 1 K. B. 461.

1515a. —— —— Application opposed by official receiver.]—Where debtor applies to the registrar in bkpcy. to rescind a receiving order made against him, on the ground that all his debts have, since the making of the order, been paid in full, & the official receiver states that in his opinion the receiving order should not be rescinded until debtor has undergone a public examination, the registrar is not bound by that opinion, though in the independent exercise of his discretion he ought to give proper weight thereto.—*Re* A DEBTOR (No. 446 OF 1918), [1920] 1 K. B. 461; 89 L. J. K. B. 113; 64 Sol. Jo. 147; [1920] B. & C. R. 31; *sub nom. Re* A DEBTOR, *Ex p.* THE DEBTOR *v.* PETITIONING CREDITORS & OFFICIAL RECEIVER, 122 L. T. 354, C. A.

1519a. —— —— All debts paid in full.]—*Re* A DEBTOR (No. 446 OF 1918), No. 1515a, *ante*.

PART III. SECT. 3, SUB-SECT. 12.

1379 iii. ——— ———.]—*Re* LITTLE, [1925] 1 D. L. R. 395; 56 O. L. R. 196; 5 C. B. R. 214; *revsg.*, [1924] 2 D. L. R. 1172.—**CAN.**

PART III. SECT. 3, SUB-SECT. 13.—B.

1408 ii. ———.]—Where a judge before whom a bkpcy. petition was being tried had no knowledge of the law of another province, & a question arose concerning that law & he sent the case over to be tried in a competent ct. in that province:—*Held:* this was a reasonable course to pursue.—*Re* FAIRWEATHERS, *Ex p.* MONTREAL (CITY) (1921), 2 C. B. R. 342.—**CAN.**

PART IV. SECT. 1.

1459 ii. ——— *Authorised assignment made before conditions of composition deed fulfilled.*]—*Re* LIPSON, [1923] 3 D. L. R. 1171; (1922), 52 O. L. R. 352; 2 C. B. R. 488.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

a. Read now "**1461 i.**"

1461 ii. *Authorised assignment—Between service & hearing of bankruptcy petition.*]—Bkpcy. Act, s. 4 (6), does not apply where debtor, with the palpable intention of choosing his own trustee, makes an assignment after he has been served with a petition in bkpcy. & before the return of the notice of hearing.—*Re* CROTEAU & CLARK CO., LTD., [1920] 48 O. L. R. 359; 55 D. L. R. 413; 1 C. B. R. 361.—**CAN.**

1461 iii. ——— *After but on same day as presentation of petition & appointment of interim receiver.*]—Although after the presentation of a petition in bkpcy. & appointment of an interim receiver debtor on the same day makes an assignment for the general benefit of his creditors to an authorised trustee other than the one asked for in the petition, the ct. will hear the petition on its return & may grant the same & appoint as trustee the person named therein.—*Re* PROGRESSIVE FARMERS CO., LTD., [1921] 3 W. W. R. 265; 1 C. B. R. 551.—**CAN.**

1461 iv. ———.]—Motion by a creditor for a receiving order, after debtor had made an authorised assignment, dismissed as unnecessary, but without prejudice to its being renewed if any necessity should arise.—*Re* WAREHOUSE (THOMAS) & CO. (1921), 64 D. L. R. 518; 50 O. L. R. 476.—**CAN.**

1464 i. *No other creditor—Other facilities for realising debt.*]—It is a sufficient cause for refusing a receiving order that the judgment creditor has equally good facilities for realising under the judgment itself, & that there is no other creditor.—*Re* STONE, [1925] 4 D. L. R. 518.—**CAN.**

ap. *Debtor in position to pay.*]—If debtor is in a position to pay petitioning creditor, no receiving order ought to be made against him without giving him some opportunity of paying or securing the debt.—*Re* MARTIN, [1923] 1 D. L. R. 1186; 51 O. L. R. 62; 3 C. B. R. 880.—**CAN.**

ii. ———.]—The ct. refused an order sequestrating a debtor's estate when it was clear that the sequestration would not be for the benefit of the creditors.—VINDLAY *v.* BRETAR (1921) 42 N. L. R. 19.—**S. AF**

1520. *Add. Citations:* [1920] 1 K. B. 461; 89 L. J. K. B. 113; 122 L. T. 351; [1920] B. & C. R. 31.

1541a. —— —— **Failure to disclose security.**]—*Re* A DEBTOR (No. 1507 OF 1921), No. 1307a, *ante*.

1545a. —— **Sequestration in Scotland.**]—*Re* A DEBTOR (No. 199 OF 1922), No. 389a, *ante*.

1548a. —— —— —— **Power to make charging order on balance of funds in court.**]—A debtor, against whom a receiving order had been made, paid money into ct. to satisfy his debts in full. The receiving order was then rescinded by an order which directed the official receiver, after paying the debts & deducting his costs, charges & expenses, to pay the balance in his hands to debtor. A subsequent unsatisfied judgment creditor applied to the registrar in bkpcy. for a charging order upon the balance of the funds in the hands of the official receiver:—*Held:* (1) the registrar had jurisdiction to make the order; (2) the registrar's jurisdiction was derived through the jurisdiction of the judge of the High Ct. to whom for the time being bkpcy. matters were assigned exercising his bkpcy. jurisdiction.—*Re* PRIOR, *Ex p.* PRIOR, [1921] 3 K. B. 333; 90 L. J. K. B. 1222; *sub nom. Re* DEBTOR, *Ex p.* DEBTOR (No. 718 OF 1920), 125 L. T. 727; [1921] B. & C. R. 124, C. A.

1552a. —— **Receiving order discharged subject to condition—Condition not fulfilled—Rescission of discharging order.**]—Debtor, a barrister, was entitled on the death of his mother to a vested remainder in tail of considerable value. His mother was seventy-five. The petition was filed on July 19, 1923. His present indebtedness amounted to about £6,000 & negotiations for a loan for that amount with an insurance co. had been going on since July 16, 1923. Owing to a delay in raising this loan, the registrar had made a receiving order on Nov. 21, 1923, from which debtor appealed; & upon debtor undertaking during the interval necessary to raise the loan, to insure his life immediately, *i.e.* from Dec. 1, 1923, to Jan. 1, 1921, in order that, in the event of his death during that period, the unsecured creditors might be safeguarded, the Ct. of Appeal allowed the appeal, discharged the receiving order & dismissed the petition without prejudice to another petition being presented if the loan was not carried through & petitioning creditors' debt not paid on or before Jan. 1, 1924. Up to Dec. 20, debtor had not insured his life pursuant to his undertaking & petitioning creditors then moved to commit debtor for contempt. The Ct. of Appeal allowed debtor three hours within which to insure his life, & a certificate being produced showing that this had been done, the ct. made no order except that debtor should pay the creditors' costs. Subsequently debtor having again broken his undertaking by not completing the insurance on his life, the Ct. of Appeal rescinded their order, with the result that the receiving order stood as originally made by the registrar.—*Re* A DEBTOR, *Ex p.* THE DEBTOR (No. 1088 OF 1923), [1924] B. & C. R. 1, C. A.

1554. *Add. Annotations:*—**Mentd.** Maatschappij voor Fondsenbezit *v.* Shell Transport & Trading Co., [1923] 2 K. B. 166; Knight *v.* Ponsonby, [1925] 1 K. B. 545.

1570. *Add. Annotation:*—**Apld.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 70.

1579a. —— **Effect of—On transactions pending appeal from receiving order.**]—*Re* WIGZELL, *Ex p.* HART, No. 1893a, *post*.

Part V.—Adjudication Order.

1603. *Add. Annotations:* **Refd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Mentd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87.

1619. *Add. Citation:* 11 Cox, C. C. 360.

1620. *Add. Annotation:* **Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1624. *Add. Annotation:*—**Consd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1625. *Add. Annotation:*—**Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1627. *Add. Annotation:*—**Mentd.** *Re* Cooke, Winckley *v.* Winterton, [1922] 1 Ch. 292.

1636. *Add. Annotation:*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

1637. *Add. Annotation:*—**Dbtd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

PART IV. SECT. 6.

1554 i. *In general—Debtor consenting to order.*]—Where a petition for a receiving order has been filed & served, debtor should not make an authorised assignment, but should notify petitioning creditor, or his solr., that he, the debtor, consents to a receiving order. *Re* LALONDE, [1921] 1 D. L. R. 1015, 55 O. L. R. 279, 4 C. B. R. 116. **CAN.**

ii. *On person holding himself out as member of partnership.*]—A receiving order made against a partnership will include a person who has held himself out as a member thereof. *Re* MAIN CLOAK CO., [1922] 1 D. L. R. 290. **CAN.**

PART IV. SECT. 7.

1575 ii. —— *To enable debtor to pay.*]—A receiving order directed not to issue for seven days & not then to issue if petitioner's claim, including the costs of the petition, satisfied.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186; 51 O. L. R. 63; 3 C. B. R. 880. **CAN.**

PART V. SECT. 1.

d i. —— —— —— *Want of assets.*]—Where there are no assets the making of an order for adjudication is in the discretion of the ct.—*Re* BARAKAT, [1920] N. Z. L. R. 134. **N.Z.**

1598 iii. —— —— —— .]—Sequestration of the estates of a debtor was pronounced in the sheriff ct. of L. in 1900. The trustee was subsequently discharged, but bkpt. never obtained his discharge. He, however, continued to carry on business & incurred new debts. In 1922 one of the new creditors presented a petition in the same ct. for sequestration of debtor's estates:—*Held:* in the circumstances Bkpcy. (Scotland) Act, 1913 (c. 20), s. 16, did not make incompetent a new award of sequestration.—COOK *v.* M'DOUGALL, [1923] S. C. 86.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 1.

xv. *On chattel mortgage by debtor.*]—The validity of a chattel mtge. given by debtor who is subsequently adjudicated bkpt. must be determined as at the time of such adjudication.—*Re* SAUNDERS ALBERTA COLLIERIES, LTD., [1925] 3 D. L. R. 323; [1925] 2 W. W. R. 122; 5 C. B. R. 727.—**CAN.**

1642. *Add. Citation :*—39 L. J. Bcy. 46.

1647. *Add. Annotation :* —**Refd.** Holden v. Southwark Corpn., [1921] 1 Ch. 550.

1656. *Add. Annotation :* —**Consd.** *Re* Boulton, *Ex p.* Moncrieff *v.* Official Receiver (1926), 135 L. T. 461.

1670. *Citation :*—For "26 L. J. Bcy. 29" read "36 L. J. Bcy. 29."

1679. *Add. Annotation :*—**Mentd.** McDonald *v.* Nash, [1924] A. C. 625.

1735. *Add. Annotation :*—**Refd.** McDonald v. Nash, [1924] A. C. 625.

1775a. —— Surplus assets after payment of composition.]—Bkpt. made a composition with his creditors, which was approved, & the cash required to satisfy the composition having been deposited with the official receiver, the adjudication was annulled, but the order annulling the adjudication contained no reference to the vesting of surplus assets : —*Held :* although the order of annulment contained no express provision as to the vesting of any surplus assets, on payment of the composition the estate of debtor, *i.e.* the surplus after satisfying the composition, would, by necessary implication, revest in debtor.—FLOWER *v.* LYME REGIS CORPN., [1921] 1 K. B. 188 ; 90 L. J. K. B. 355 ; 124 L. T. 163 ; 37 T. L. R. 145 ; 65 Sol. Jo. 133 ; [1920] B. & C. R. 138, C. A.

Part VI.—Official Receiver, Special Manager, and Interim Receiver.

1808a. On grant of administration—Estate of undischarged bankrupt—Whether estate of trustee divested—After-acquired property.]—An order under 1914 Act, s. 130, for the administration of the estate of a deceased undischarged bkpt. according to the law of bkpcy. is not a second or subsequent receiving order or adjudication within s. 39 so as to divest the estate of the trustee in bkpcy. in favour of the official receiver under the administration order ; but bkpt.'s estate, including any after-acquired property, remains vested in his trustee in bkpcy.—*Re* SARJEANT, [1923] 2 Ch. 302 ; 129 L. T. 825 ; *sub nom. Re* SARJEANT, *Ex p.* OFFICIAL RECEIVER, 92 L. J. Ch. 626 ; [1923] B. & C. R. 63.

1826. *Add. Annotation :*— **Refd.** *Re* A Debtor, [1920] 1 K. B. 461.

1853. *Add. Annotation :*— **Refd.** Everett *v.* Griffiths, [1920] 3 K. B. 163.

Part VII.—The Trustee and Committee of Inspection.

1889. *Add. Annotations :* —**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Refd.** *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67.

1890. *Add. Annotations :*— **Consd.** Scranton's Trustee *v.* Pearse [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925). 133 L. T. 814. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67.

1892. *Add. Annotation :* **Mentd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

1893. *Add. Citations :* — 122 L. T. 35 ; [1918-19] B. & C. R. 219.

Add. Annotations :—**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

1893a. —— Duty not to take advantage of mistake of fact.]—A receiving order was made against a debtor, who thereupon applied for & obtained a stay of the advertisement of the receiving order & all proceedings thereunder pending an appeal therefrom. The appeal was subsequently dismissed & an order was made adjudicating him bkpt. At the date of the receiving order bkpt. had an account at a bank. After the making of the receiving order & pending the hearing of the appeal bkpt. paid into the bank £165 which he had collected from his debtors, & drew out of his account £199. The bank acted in good faith & received & paid those sums in the ordinary course of business without knowing that a receiving order had been made against bkpt. The trustee in bkpcy. claimed a declaration that the sums paid into the bank after the date of the receiving order vested in him as trustee : *Held :* (1) the sums paid into the bank by bkpt. after the date of the receiving order became by virtue of 1914 Act, ss. 18 (1), 37 (1), 38 (*a*), the property of his trustee in bkpcy. ; (2) the bank were not entitled to credit themselves with the payments out to bkpt., as those transactions took place after the date of the receiving order & were therefore not protected by sects. 45 & 46 ; (3) there was

PART V. SECT. 3, SUB-SECT. 3.

s (p. 1381) l. —— *In filing petition—Creditor prejudiced.*)—*Re* HASTIE, [1926] N. Z. L. R. 424.—**N. Z.**

PART VI. SECT. 8.

sw. *When court will appoint.*)—Petitioner must convince the ct. that an interim receiver is necessary to protect the creditors' interests.—*Re* CANADIAN COAL SUPPLY, *Ex p.* STAPLES BELL INC., [1924] 2 D. L. R. 831 ; 4 C. B. R. 577.—**CAN.**

m l. — .)—*Re* CANADIAN COAL SUPPLY, *Ex p.* STAPLES BELL INC., [1924] 2 D. L. R. 831 ; 4 C. B. R. 577.—**CAN.**

PART VII. SECT. 1.

sa. *Representation of creditors To enforce rights.*)—*Re* HERMAN, *Ex p.* GOLDSTEIN, [1923] 3 D. L. R. 101 ; 4 C. B. R. 84.—**CAN.**

nothing dishonest in the trustee enforcing the rights given to him by the Act, & the action of the ct. in staying the advertisement & proceedings could not operate in any way in derogation of the rights of the trustee.—*Re* WIGZELL, *Ex p.* HART, [1921] 2 K. B. 835; *sub nom. Re* WIGZELL, *Ex p.* TRUSTEE, 90 L. J. K. B. 897; [1921] B. & C. R. 42; *sub nom. Re* WIGZELL, *Ex p.* TRUSTEE *v.* BARCLAYS BANK, LTD., 125 L. T. 361; *sub nom. Re* WIGZELL, HART *v.* BARCLAYS BANK, 37 T. L. R. 526; 65 Sol. Jo. 493, C. A.

Annotations :—As to (2) **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. *As to* (3) **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Reld.** *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67.

1894a. —— **Duty to recover statutory debt.**]—In 1919 debtor paid deft., a bookmaker, various cheques for bets lost on horse racing, & these cheques were cleared through various banks, as holders. On Aug. 30, 1920, debtor was adjudicated bkpt. & on Mar. 30, 1921, his trustee in bkpcy. by the direction of his committee of inspection, commenced an action to recover £955, the amount admitted to be due, if recoverable. The action was transferred to the judge in bkpcy. under Bkpcy. Rules, 1915, r. 123. Deft. took the point that such an action ought not to be brought by an officer of the ct., as the claim, however legal, was practically dishonest, & that all cts. must apply the rule in *Re Condon, Ex p. James*, No. 60, *ante*:—*Held*: the claim the trustee in bkpcy. was seeking to enforce was in respect of a debt which under Gaming Act, 1835 (c. 41), s. 2, & the decision of the House of Lords in *Sutters* v. *Briggs* (*see* GAMING & WAGERING, Vol. XXV., p. 418, No. 213), was a statutory debt, & there was nothing in *Re Condon, Ex p. James*, or in any of the cases in which the rule in that case had been followed, which entitled the ct. to say that if & when a right of action in respect of such a debt vested in a trustee in bkpcy., it was a dishonest or dishonourable thing for him as an officer of the ct. to enforce it, & judgment for the trustee in bkpcy. must be entered in the action for the amount claimed.—SCRANTON'S TRUSTEE *v.* PEARSE, [1922] 2 Ch. 87; 91 L. J. Ch. 579; 127 L. T. 698; 38 T. L. R. 629; 66 Sol. Jo. 503; [1922] B. & C. R. 52, C. A.

Annotation :—**Reld.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

1894b. —— **Duty to act equitably—Recovery of money paid to bankrupt with approval of official receiver.**]—On June 26, 1924, a receiving order was made against W. on a petition presented on May 25, 1924, in respect of an act of bkpcy. on May 1, 1924. W. was a promoter of boxing contests & had in view at the date of the presentation of the petition boxing competitions, one of which was held at the Stadium, Wembley, on Aug. 9, 1924. He appealed against the receiving order, & pending that appeal the receiving order was not gazetted. His appeal having failed it was then gazetted on July 29, 1924. At an interview between W., his solr., the solr. for the Wembley authorities & A., the assistant official receiver, who under Bkpcy. Rules, 1915, r. 316, represented the official receiver, A. was told of the proposed boxing contest & the judge held on the evidence that at the interview W. told A. he desired notwithstanding the receiving order to be allowed to stage the contest as the only hope of providing assets to meet the claims of his creditors, & that it was arranged he could do so without any interference by the official receiver, on W. undertaking not to use the proceeds of the sale of tickets for his private purposes but only for discharging the expenses of the staging of the contest & to hand over any balance to the official receiver. On that arrangement being made W. proceeded with the negotiations for the contest & an agreement was executed by which he gave the Wembley authorities the right to collect all moneys paid for tickets at the turnstiles, & they were to have those moneys as a security for the payment by W. for the use of the Stadium. Various ticket agents paid W. for blocks of tickets to be sold by them to the public. The contest, which was held at the Stadium on Aug. 9, 1924, only realised after payment of all expenses £730 which W. paid to the official receiver. On Sept. 6, 1924, W. was adjudicated bkpt., & on Sept. 9, S. was appointed trustee in the bkpcy. On a motion by S. to recover from the various ticket agents all sums paid by them since the date of the receiving order to W. for tickets they had bought from him & to recover the money collected by the Wembley authorities at the turnstiles:—*Held*: A. had power to give his sanction to W.'s receipt of the proceeds of the sale of tickets to be applied by him in discharging expenses & the trustee in bkpcy. was bound by the sanction so given, but even if he were not so bound & even if A. exceeded his powers the trustee could not take the benefit of W.'s activities without accepting their burden, & the payment to W. of the moneys which the trustee claimed, being the direct result of the leave obtained by W. from A. to stage the boxing contests, it would be inequitable & unjust to make resps. pay these moneys over again for the benefit of W.'s creditors & to hold that the charge given to the Wembley authorities was nugatory.—*Re* WILSON, *Ex p.* SALAMAN, [1926] Ch. 21; 95 L. J. Ch. 58; 133 L. T. 814; 70 Sol. Jo. 65; [1925] B. & C. R. 96.

1895. *Add. Annotations :*—**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

1896. *Add. Annotations :*—**Consd.** *Re* Stokes, *Ex p.*

PART VII. SECT. 2, SUB-SECT. 2.

1943 i. *Who may appeal against decision on election—Custodian not being creditor.*]—The custodian appointed by the official receiver after an authorised assignment under Bkpcy. Act, if he is not a creditor of the assignor, is not entitled to appeal from the decision of the official receiver as chairman of the first meeting of creditors who, after passing on the admission or rejection of proofs of claim for the purpose of voting, has declared a certain person elected as trustee.—*Re* MCCOURBEY, [1924] 2 D. L. R. 1193; [1924] 2 W. W. R. 348; 4 C. B. R. R. 643.—CAN.

PART VII. SECT. 2, SUB-SECT. 6.

1959 ii. —— *Conflict of interest & duty.*]—Where a trust co. was an authorised trustee in the bkpcy. of a limited co., & certain directors & shareholders of the latter, having large claims against debtors' estate, were also shareholders of the trust co., one being also a director, it was considered undesirable that the trust co. should continue to act, & another trustee was appointed.—*Re* SHAW (WALTER W.) CO., LTD., [1923] 3 W. W. R. 119; 68 D. L. R. 616.—CAN.

, [1919] 2 K. B. 256; *Re* Thellusson, *p.* Abdy, [1919] 2 K. B. 735.

1901. *Add. Annotation:*—**Mentd.** Christoforides *v.* Terry, [1924] A. C. 566.

2007. *Add. Annotation:*—**Mentd.** Toronto Ry. *v.* Toronto City, [1920] A. C. 446.

2028a. —— ——.]—Where a trustee in bkpcy. with the sanction of the committee of inspection employs a solr. to do particular business, the principle on which the solr.'s bill of costs against the trustee is to be taxed is that of solr. & client, not as between solr. & his own client but that of "where the client & others are interested in a common fund," i.e. bkpt.'s estate, & on such a taxation the taxing master is not bound to allow copies of documents supplied to counsel at his request, nor the whole amount of the fees paid to counsel on the written authority of the trustee. But where the trustee has honestly sanctioned an expenditure which is not excessive, the taxing master should take a liberal view as far as possible in allowing the amounts against the estate which have honestly been incurred on behalf of such trustee.—*Re* LAVEY, *Ex p.* COHEN & COHEN, [1921] 1 K. B. 344; 90 L. J. K. B. 240; 124 L. T. 572; [1920] B. & C. R. 171.

2064. *Add. Annotation:*—**Mentd.** Christoforides *v.* Terry, [1924] A. C. 566.

2071. *Add. Annotation:*—**Mentd.** Christoforides *v.* Terry, [1924] A. C. 566.

PART VII. SECT. 4, SUB-SECT. 2.

sb. *To employ bankrupt at remuneration—Approbation of court.*]—*Held:* the employment of bkpt. & the terms of his employment, including his remuneration, must have the approbation of the ct.; the subsequent approbation is unauthorised by Bkpt. & Insolvent Act, 1857, s. 276.—*Re* MACKAY, MCGUINNESS *v.* HOLLINGSHEAD (1921), 55 I. L. T. 89.—IR.

sc. *To accept tenders.*]—When the trustee is accepting tenders, he must have the written authority of the inspectors to do so.—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922), 65 D. L. R. 136.—CAN.

sd. *To dispose of property.*]—When the trustee is selling stock or transferring property he must have the written authority of the inspectors to do so.—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922), 65 D. L. R. 136.—CAN.

1983 i. *Payment—Power to make—To complete contract.*]—Debtor agreed to purchase goods on condition that should he fail to complete payment he should lose all the money paid. When all the payments had been made save the last one debtor became bkpt.:—*Held:* the trustee might pay the last instalment & retain the goods.—*Re* LEMIEUX & COPPING MOTOR DISTRIBUTORIES (1922), 69 D. L. R. 105; 1 C. B. R. 464.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—A.

j i. —— *Some creditors not notified.*]—If the trustee discovers that he has to send to some of the creditors a intended to be sent to all, he should notify those who have been overlooked to file their proofs & should advise them of what has taken place; it is not necessary to call a new meeting.—*Re* CANADIAN CEREAL & FLOUR MILLS CO. (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—CAN.

2001 i. *To realise to best advantage—Acceptance of tenders.*]—The trustee must be governed by the advice of the inspectors & by ordinary business judgment in delaying the acceptance of any tender for the purchase of debtor's assets.—*Re* CANADIAN CEREAL & FLOUR MILLS CO. (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—B. (b).

2008 fi a. —— *Accountant—Charge for clerk's time.*]—Where an accountant's work is indispensable a under Bkpcy. Act may be allowed charge against the estate, as a disbursement subject to taxation, a fee for his partner's work as accountant provided the trustee renounces any profit thereby accruing to him. But payments made to the trustee's firm for the work of its

BRYANT ISARD & CO., [1925] 4 D. L. R. 157; 57 O. L. R. 471; 5 C. B. R. 71.—CAN.

sl. *Costs incurred before ment of inspectors.*]—Solrs.' services rendered prior to the appointment of inspectors are not taxable the estate.—*Re* STONEBERG (1922), 69 D. L. R. 728; [1922] 2 W. W. R. 1328.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—C. (a).

2035 i. *Order for payment When granted—Proceeds of sale handed over to debtor.*]—Where debtor parts with property to a trustee who, in fraud of creditors, disposes of it & hands over the proceeds of the sale to debtor, such a fraudulent trustee may be compelled to pay to the creditors the which he received as a result of

3 D. L. R. 267.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—H.

sk. *Trustee giving secret information to purchaser of part of estate—Right to set aside sale.*]—*Re* DAVIES FOOTWEAR CO., UNDERHILLS, LTD. *v.* BARBER (1923), 53 O. L. R. 467; 4 C. B. R. 131.—CAN.

PART VII. SECT. 5, SUB-SECT. 2. A.

2125 iv a. —— *Cash receipts.*] s to l to five of the in all the Inspectors in writing the amount & the ct. appr *Re* BRYANT ISARD & CO., [1925] 4 D. L. R. 157; 57 O. L. R. 471; 5 C. B. R. 799; *varying* [1925] 1 D. L. R. 847; 5 C. B. R. 393.—CAN.

2125 iv b. —— *Meaning.*]—*Re* JOHNSTON, [1925] 4 D. L. R. 226.—CAN.

priority— *Crown* paid his & in priority to the Crown. CANADIAN CANNER A.-G. D. L. R. 1307; 5 C. B. R. 54.—CAN.

—— *Over claims for taxes.*]—A in bkpcy. is entitled to his fees & expenses out of in priority to the Crown's claim for taxes.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—CAN.

sn. —— ——.]—The claim of the trustee in bkpcy. for his payable in priority to the by debtor to a municipality.—ADAMS SHOE CO., *Ex p.* TOWN PENETANGUISHENE, [1923] 4 D. L. R. 927.—CAN.

sp. —— ——.]—The trustee in bkpcy.'s claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act.—*Re* DAVIS, [1921] 3 D. L. R. 556; 4 C. B. R. 698.—CAN.

st. —— *Over claims by* If the landlord's claim arose to that of the Crown's claim for the trustee's claim for expenses will count after the claim.—*Re* DAVIS, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—CAN.

Priority of debts generally, *see* in Part XII., *post.*

q i. *Power of court to enforce ment.*] The ct. will not dispose of a petition for an order for immediate payment of the trustee's costs.—MEN'S R 2 C. B. R. 534.—CAN.

PART VII. SECT. 5, SUB-SECT. 2.—B. (b).

sw. *Duty to indemnify—Value of estate* Where there is any doubt to the value of the estate an before pr with its an indemnity from the creditors. GEMP (1921), 69 D. L. R. 202; 51 O. R. 118; 2 C. B. R. 56.—CAN.

PART VII. SECT. 6, SUB-SECT. 1. B.

2159 i. *Receiver handing over to trustee Whether lien for Whether loses* ... *stands to of trustee.*]—*Held* (1) the ver's fees & exp paid in priority to other fe in the administration the the creditors the upon the gr that he the cr 69 D. L. R. 202; L. R. 118; C. B. R. 56.—CAN.

2159 ii. — — ; of the rec order authorised trustee, no knowledge that a bkpcy. had been T. ha rece for which of the of the *Re* D. R. 111; 51 O. R. R. 138.—CAN.

2101. *Add. Annotation :*—**Mentd.** Christoforides *v.* Terry, [1924] A. C. 566.

2163. *Add. Annotation :* — **Mentd.** Johnson *v.* Stephens & Carter & Golding, [1923] 2 K. B. 857.

2176. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth, Partington, [1925] 1 K. B. 589.

Part VIII.—Proof of Debts.

2344. *Add. Annotation :* —**Consd.** *Re* Moss, *Ex p.* Everitt (1923), 93 L. J. Ch. 98.

2353. *Citations :* —Delete "] L. J. Bcy. 44."

2383. *Add. Annotation :* —**Mentd.** Steinberg *v.* Scala (Leeds), [1923] 2 Ch. 452.

2385. *Add. Citations :* —*affg.* S. C. *sub nom.* MORGAN *v.* HARDY (1887), 18 Q. B. D. 646, C. A.; *revsg.* (1886), 17 Q. B. D. 770.

L. Annotations : **Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322. **Mentd.** Joyner *v.* Weeks, [1891] 2 Q. B. 31; Anstruther-Gough-Calthorpe *v.* McOscar, [1924] 1 K. B. 716.

2411. *Add. Annotation :* **Mentd.** Burrell *v.* Leven (1926), 12 T. L. R. 107.

2415. *Add. Citation :* 1 Ves. & B. 112.

2429. *Add. Citation :* —15 L. J. Bcy. 9.

2455. *Add. Annotation :* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

2459. *Add. Annotation :* —**Mentd.** *Re* Farrow's Bank, [1921] 2 Ch. 164.

2463. *Add. Citations :* —*affg.* S. C. *sub nom.* MORGAN *v.* HARDY (1887), 18 Q. B. D. 646, C. A.; *revsg.* (1886), 17 Q. B. D. 770.

Add. Annotations : **Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322. **Mentd.** Joyner *v.* Weeks, [1891] 2 Q. B. 31; Anstruther-Gough-Calthorpe *v.* McOscar, [1924] 1 K. B. 716.

2467. *Add. Annotations :*—**Refd.** *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149. **Mentd.** Victoria City *v.* Vancouver Island (Bp.), [1921] 2 A. C. 384; Wise *v.* Lansdell, [1921] 1 Ch. 420

2591. *Add. Annotation :* —**Consd.** Spencer *v.* Ashworth, Partington, [1925] 1 K. B. 589.

2597. *Add. Citation :*— 15 L. J. Bcy. 9.

2639. *Add. Annotation :* — —**Mentd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

2689. *Add. Annotation :* —**Mentd.** Omnium Insce. Corpn. *v.* United London & Scottish Insce. (1920), 36 T. L. R. 386.

2812. *Add. Annotations :* —**Consd.** Firman *v.* Royal, [1925] 1 K. B. 681. **Mentd.** *Re* Naters, Ainger *v.* Naters (1919), 122 L. T. 154.

2815. *Add. Annotation :* —**Refd.** Campbell *v.* Campbell, [1922] P. 187.

2875. *Add. Annotation :*—**Mentd.** Bowling *v.* Camp

PART VII. SECT. 9, SUB-SECT. 1. C. (a).

sa. *For good cause.*] If a trustee in bkpcy. acts throughout with the of the creditors, & if s ment as at a be no gr ls for dismissing

Re GARDNER (1922), 65 D. L. R. 128. **CAN.**

PART VII. SECT. 10.

sb. *Exercise of powers. A act & 6)*

CAN.

PART VIII. SECT. 4, SUB-SECT. 1.

2385 ii. — *Bankruptcy Act, s. 44.*] — The above sect. does not give persons not otherwise entitled to recover from bkpt. a right to prove against his estate because of an obligation to a third person. — *Re* EXCELSIOR ELECTRIC DAIRY MACHINERY, LTD., [1923] 3 R. 1176; 922), 32 O. L. R. 225; 2 C. B. R 399. **CAN.**

—*Held :* not provable. *Re* KELVINGTON GRAIN GROWERS' CO-OPERATIV ASSOCN., [1924] 1 D. L. R. 249.— **CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—B.

2427 i.

to

co. that there would until the out- for

liveries was settled. The insolvent co. made no demand for deliveries & the sugar co. made no tender :— the sugar co. could not be permitted to lie by until the whole period of the contract was up & then claim di for the failure to call for delivery du each of the preceding months.— ROCKLAND COCOA & CHOCOLATE 921), 61 D. L. R. 611; O.); 2 C. B. R. 43.— **CAN.**

2428 i. — *or loss on re s* could prove for would have be entitled to against the insolvent for the breach of the contract. *Re* HACKBORN (1922), 67 D. L. R. 227, 51 O. L. R. 312; 2 C. B. R. 224.—

2438 i. — — *Payment in foreign currency.*] *Held :* the vendor entitled to prove for an amount equivalent in value to the amount payable in foreign currency. *Re* McKAY (1922), 52 O. L. R. 466; 3 C. B. R. 462.— **CAN**

2438 ii. — *Goods not reasonably fit for required purpose.*]— *Held :* the value of the goods should be estimated, the damages incurred by the purchaser deducted, & the balance proved for.— *Re* SCOTLAND WOOLLEN MILLS CO., [1923] 2 D. L. R. 274; 3 C. B. R. 636. —**CAN.**

sd. *Sale & purchase in bulk.*]—Claim of purchaser to rank on estate of vendor disallowed.— *Re* WHITE, [1925] 1 D. L. R. 1189; 58 N. S. R. 1; 5 C. B. R. 511.— **CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.— D. (a).

2481 v. — *Contingent on survivorship.*] *Re* LAING, (1921), 64 D. L. R. 637; 51 O. L. R. 11; C. B. R. 38.— **CAN.**

PART VIII. SECT. 4, SUB-SECT. 3. D. (b) iii.

2526 ii. — —.]—*Re* ANDREW MOTHERWELL ESTATE, [1923] 4 D. L. R. 986; *affd.* 25 O. W. N. 359.— **CAN.**

ii. — —.]—*Held :* the surety could not rank on the estate before the creditor had been paid in full.—*Re* COUGHLIN & CO., *Ex p.* GUARANTEE CO. OF NORTH AMERICA, [1923] 4 D. L. R. 971; 3 W. W. R. 1177.— **CAN.**

2545 iii. — — .] —The contingent liability of a surety who has not been d on to pay is a debt provable on the bkpcy. of the principal debtor.— *In re* FROMENT, ALBERTA LUMBER CO. *v.* ALBERTA DEPARTMENT OF AG E, [1925] 3 D. L. R. 377; [1925] 2 W. W. R. 415; 5 C. B. R. 765.—**CAN.**

2545 iv. — —.]— A surety who has not paid or been excused becomes on the insolvency of the principal debtor a conditional creditor, & may as such prove his claim against the insolvent estate. —ROSSOUW, ETC. *v.* HODGSON, [1925] App. D. 97.— **S. AF.**

not carried out.]—*Held :* the creditor was entitled to rank as a creditor for the amount which he had agreed to pay off.— *Re* BENSON-JOHNSTON, LTD., [1924] 4 D. L. R. 575; 5 C. B. R. 196; *affd.* [1925] 1 D. L. R. 999; 5 C. B. R. 414 —**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.— D. (b) iv.

2560 i. *Co-surety's liability to (ntribution.*)— A surety can prove in the bkpcy. of a co-surety for contribution, although the proving surety has not paid the creditor anything.—. MENT. ALBERTA LUMBER CO. ALBERTA DEPARTMENT OF AGI TURE, [1925] 3 D. L. R. 377; [1925] 2 W. W. R. 415, 5 C. B. R. 765.— **CAN.**

2901. *Add. Annotation :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

2902. *Add. Annotations :*—**Refd.** *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113 ; Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

2902a. —— ——.]—By marriage articles in 1914, made between husband & wife & three trustees, it was agreed that, after the intended marriage, an indenture of settlement should be executed & that the husband would bring into settlement all property to which he then was or thereafter might become entitled, to be held, subject to life interests in favour of husband & wife, upon trusts to be mutually agreed between the trustees of the settlement. It was further agreed that the first trustees of the settlement should be the three trustees of the articles therein named, & that if they or either of them should fail to accept the trusteeship of the settlement, then such other person or persons as the spouses should nominate ; & that in the meantime until the execution of the settlement the persons in whom such property should be vested should hold the same upon the trusts of the settlement. The marriage was solemnised on the day of the execution of the articles. On the death of his father on Feb. 22, 1918, the husband, under his will, became entitled in reversion, subject to the life interest of testator's widow, to a share in his residuary estate. On June 13, 1919, the trustees of the articles gave notice to the will trustees of the execution of the articles. On Oct. 21, 1920, the husband, in pursuance of his contract contained in the articles, executed a settlement by which he assigned to the trustees thereof, of whom there were three & of whom one was also a trustee under the articles, but the other two were not, his interest under his father's will upon trusts for the benefit of his wife & children. On Dec. 5, 1921, the settlor was adjudicated bkpt. The trustee in bkpcy. moved for a declaration that the settlement & the transfer of the property purported to be made thereunder were void as against him : - *Held :* (1) the acquisition by bkpt. on his father's death of the property which was non-existent at the date of the articles did not operate under the well settled doctrine as a complete equitable assignment of that property, as the persons to whom the property was contracted to be assigned & the trusts upon which such persons were to hold it were not ascertained at the date of such acquisition ; (2) even if there had been an equitable assignment within that doctrine, it would not have operated as a transfer of property within the true meaning of 1914 Act, s. 42 (3) ; (3) the assignment contained in the settlement of Oct. 1920, operated as a transfer of property within that sub-sect. & was void by reason of its execution within two years of the commencement of the bkpcy. - *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113 ; 92 L. J. Ch. 106 ; 67 Sol. Jo. 32 ; [1922] B. & C. R. 137.

2955. *Add. Annotation :* **Distd.** *Re* Pitchford, [1924] 2 Ch. 260.

2978a. Proof by plaintiff against bankrupt defendant—Stay of action after bankruptcy - Proof in bankruptcy for amount claimed in action.—On Oct. 25, 1920, resp., a mtge. broker, hereinafter called pltf., issued a writ against debtor in the K. B. Div. to recover a sum of £650 for commission earned. On June 20, 1921, the action was set down for trial. On July 19, 1921, a receiving order was made against debtor. On Feb. 2, 1922, on the application of pltf. made in the action the action was stayed with liberty to pltf. to restore. On Mar. 6, 1922, pltf., instead of applying to restore the action, lodged his proof in the bkpcy. of debtor for £650. The official receiver rejected his proof, but on Jan. 17, 1923, the county ct. judge reversed the decision of the official receiver & admitted the proof. On Sept. 20, 1923, pltf. lodged a further proof for £16 17*s.* 9*d.* for his untaxed costs of the action, all of which were incurred before the date of the receiving order. On Oct. 31, 1923, the official receiver rejected that proof. Pltf. appealed, & on Feb. 11, 1924, the county ct. judge reversed his decision & ordered that the proof of the costs, amounting to £16 17*s.* 9*d.*, should be admitted subject to taxation. On the appeal of the official receiver : *Held :* (1) as pltf. had obtained no judgment dealing either with his claim in the action or the costs thereof, but had elected to stay his action & to prove in bkpcy. for the amount claimed in the action, he was not entitled to prove for his untaxed costs of the action ; (2) (Astbury, J.) the sum for which pltf. sought to prove in respect of his costs was not a debt or liability certain or contingent to which debtor was subject at the date of the receiving order or to which he might become subject before his discharge by reason of any obligation incurred before that date, within 1914 Act, s. 30 (3), & therefore was not provable. *Re* Pitchford, [1924] 2 Ch. 260 ; *sub nom. Re* Pitchford, *Ex p.* Official Receiver, 93 L. J. Ch. 511 ; [1924] B. & C. R. 118 ; *sub nom. Re* Pitchford, *Ex p.* Official Receiver *v.* Hall, 131 L. T. 669, D. C.

2983. *Add. Annotations :* **Refd.** *Re* Pitchford, [1924] 2 Ch. 260. **Mentd.** London Steamship & Trading Corpn. *v.* Russian Volunteer Fleet (1926), 135 L. T. 607.

2989. *Add. Annotation :* -**Consd.** *Re* Pitchford,

2991. *Add. Annotation : As to* (1) **Refd.** *v.* Buckley, [1924] 1 K. B. 903.

2993. *Add Annotation :* - **Consd.** *Re*

PART VIII. SECT. 4, SUB-SECT. 3. L.

2903 i *Continuing c*

ors were entitled to be paid
ges sustained in respect of
ard portions of the contract.
McKay (1922), 52 O. L. R. 466 ;
3 C. B. R. 462.—**CAN.**

PART VIII. SECT. 4. SUB-SECT. 7.

appeal granting a receiving

amount of their c ts so incurred.
Re Tunnell, Ltd., [1924], 4 D. L. R.
502, 56 O. L. R. 11 ; 5 C. B. R. 73.
CAN.

PART VIII. SECT. 6, SUB-SECT. 1.

3018 v. — — A d
] — It is of

3018 vi. *Omission of "*
Assignment" Effect of

de

3049. *Add. Annotation :*—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

3105a. Creditor money-lender—Contract harsh & unconscionable.]—A trustee in bkpcy. has no power to reject or reduce a proof by a money-lender, on the ground that the contract is harsh & unconscionable, such power being vested in the ct. alone.—*Re* ARMSTRONG, *Ex p.* LIPTON (1926), 95 L. J. Ch. 184 ; [1926] B. & C. R. 21.

3137. *Add. Annotation :*—**Mentd.** *Re* Jubilee Cotton Mills, [1922] 1 Ch. 100.

3152a. — — — — — —.]—The effect of Bkpcy. Rules, 1915, r. 262 read with rr. 26, 27, 28, is that subject to the ct.'s power to extend the time, which will only be exercised in very special circumstances, no application to reverse or vary the trustee's decision in rejecting a proof can be entertained unless it is made by notice of motion supported by affidavit & set down within 21 days of the decision, so that there is an effective application before the ct. within that period.—*Re* BARLEY, [1923] 1 Ch. 177 ; *sub nom. Re* BARLEY, *Ex p.* HARRISON, 92 L. J. Ch. 419 ; [1922] B. & C. R. 258.

3167. *Add. Annotation :*—**Mentd.** *Re* Pitchford, [1924] 2 Ch. 260.

3172. *Add. Annotation :*—**Consd.** *Re* Searle, Hoare, [1924] 2 Ch. 325.

3173a. Debt arising out of harsh & unconscionable contract—Creditor money-lender.]—*Re* ARMSTRONG, *Ex p.* LIPTON, No. 3105a, *ante*.

3210. *Add. Annotation :*—**Consd.** *Re* Searle, Hoare, [1924] 2 Ch. 325.

3210a. — — —.]—Where, after the admission by the trustee of a creditor's proof against bkpt.'s estate & that creditor's participation in a first dividend, it was ascertained that he had proved for & received more than he was

— any rule in bkpcy., the well known principle of equity, that a beneficiar who has been overpaid is not entitled t receive any further payment out of th common fund, until the payments to th other beneficiaries are levelled up to th amount received by the overpaid beneficiary was applicable with the result that the over paid creditor was not entitled to participate in any future dividends in respect of his reduced proof without giving credit for the overpayment in respect of his original proof.

The mere fact that the trustee cannot recover either payments made to a creditor whose proof is subsequently expunged or overpayments made to a creditor whose proof is subsequently reduced, does not prevent the operation of that equitable principle in the case of a proof in bkpcy. Nor does the judgment of JESSEL, M.R., in *Re Tait, Ex p. Harper* (*see* No. 3210), contain any statement inconsistent with that application of the principle.—*Re* SEARLE, HOARE & CO., [1924] 2 Ch. 325 ; 68 Sol. Jo. 755 ; *sub nom. Re* SEARLE, HOARE & CO., *Ex p.* TRUSTEE, 93 L. J. Ch. 571 ; 132 L. T. 21 ; [1924] B. & C. R. 114.

3214. *Add. Annotation :*—**Mentd.** *Re* Maxson, *Ex p.* Trustee, [1919] 2 K. B. 330.

3222. *Add. Citation :*—[1918–19] B. & C. R. 276.

3224. *Add. Annotation :*—**Refd.** *Re* Maxson, *Ex p.* Trustee (1919), 88 L. J. K. B. 54.

3264a. —— —— **Dividend received.**]—Applts. sold a quantity of rice to a purchaser. The purchase-money was not paid, & the vendors brought an action claiming the return of the goods on the ground that they had been obtained by the fraud of the purchaser. The purchaser became bkpt., & resps., who were the trustees in the bkpcy., were added as defts. The vendors afterwards proved for

variance. *Re* McC — cy, *Re* [illegible]

[1924] 4 D. L. R. [illegible]
W. W. R. 587.—**CAN.**

ancy of statement.] The [illegible] of account [illegible] sel to in a d [illegible] when it [illegible] "If, [illegible] a a [illegible] o tl not [illegible] L & [illegible] ion in [illegible] with the [illegible] of [illegible] it may reasonably be that the statement is that

REY, *Re* STRATTON [illegible] L. R. 1227 ; [1924] 3 W. W. R. 587. CAN.

as one of the the declara-

there [illegible] on does not has knowledge to it is objection- be rejected.—*Re* McCOURREY, *Re* STRATTON & GREEN- TD., [1924] 4 D. L. R. 1227 ; V. W. R. 587.—**CAN.**

inentions & erasures.]—the declaration contains [illegible] & erasures not duly ialed, it may be received, in the retion of the official receiver, nan, or trustee, if he is satisfied the change was made before the

Ltd., [1924] 4 D. L. R. 1227 ; [1924] 3 W. W. R. 587.—**CAN.**

3024 ii. — — —.]—It is sufficient if made before a person authorised to take affidavits under Canada Ev Act, R. S. C., 1906 (c. 145), s. 2

s, LTD., [1924] 4 D. L. R. 1227 ; 3 W. W. R. 587.—

PART VIII. SECT. 6, SUB-SECT. 2.

si. *Necessity for filing claim.*]—Neither the ct. nor the trustee will consider a creditor's claim against bkpt.'s estate until it has been filed.—*Re* CONTINENTAL PUBLISHING CO., *Ex p.* DAVIS & [illegible] D. L. R. 339 ; 4 C. B. R. 343.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 1.

3035 vi. — — — — —.]—The judge has power to inquire into the consideration for the judgment debt.—*Re* ALLAN GRAIN GROWERS' CO-OPERATIVE ASSOCN., *Ex p.* ROBINSON, LITTLE & CO. (1922), 65 D. L. R. 347 ; 15 Sask. L. R. 295 ; [1922] 2 W. W. R. 142.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 5.

3147 ii. —— —— *To direct*

Held : the bkpcy.
to direct an issue to
re [illegible]
WESTERN TRUST CO., [1923] 2 D. L. R. 361 ; 16 Sask. L. R. 401 ; [1923] 1 W. W. R. 1068.—**CAN.**

3157 i. —— *Evidence.*]—The autho- , or claim

evidence the whole or any part of examinations of directors of debtor corpn. taken under Bkpcy. Act, s. 56.—*Re* CHRISTIE GRANT, LTD., [1921] 3 W. W. R. 264 ; 1 C. B. R. 489.—**CAN.**

3157 ii. *S. P. Re* DUMFERMLINE TRADING CO., *Ex p.* RELIABLE TRADING CO. (1922), 66 D. L. R. 813 ; [1922] 2 W. W. R. 1274.—**CAN.**

PART VIII. SECT. 10.

3218 ii. —— —— ——.]—The creditor was allowed to amend his claim & set out the security which he held.—STERLING CLOTHING CO. *v.*

66 D. L. R. 358 ; 2 C. B. R. 535.—**CAN.**

3218 iii. —— *Proof made on footing of holding security—Security invalid.*]—Claimant was allowed to amend his claim.—*Re* DUMFERMLINE TRADING CO., *Ex p.* RELIABLE TRADING CO. (1922), 66 D. L. R. 813 ; [1922] 2 W. W. R. 1274.—**CAN.**

PART VIII. SECT. 12.

sm. *Claim rejected in part— of o appeal.*]—A creditor
tion from the trustee disallowing of his claim & enclosing a cheque for the balance. The creditor clearly showed that he had no intention of accepting the cheque in full accord & satisfaction of his claim, but the cheque :—*Held :* the creditor not thereby debarred from from the disallowance by the trustee.—

D. L. R. 339.—CA

the price of the goods sold in the bkpcy. & received a dividend:—*Held:* they had elected to affirm the contract of sale, & the action could not be maintained.—KIN TYE LOONG *v.* SETH (1920), 89 L. J. P. C. 113; 123 L. T. 639; [1920] B. & C. R. 89, P. C.

3267. *Add. Annotation:*—**Mentd.** The Joannis Vatis (No. 2), [1922] P. 213.

Part IX.—Secured Creditors.

3334. *Add. Annotation:*—**Reld.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

3363. *Add. Annotation:*—**Mentd.** Giles *v.* Kruyer, [1921] 3 K. B. 23.

3365. *Add. Annotation:*—**Mentd.** *Re* Chiandetti, *Ex p.* Trustee (1921), 91 L. J. K. B. 70.

3375a. Deposit of securities—To secure joint debt of firm—Debts due under separate personal guarantees of partners.]—The general rule in bkpcy., that, when a creditor seeks to prove against his debtor's estate, he must give up or value any security which if not retained by him would go to augment that estate, presupposes that the security is for the particular debt for which he seeks to prove, & does not apply to a case where the security is for a different debt.

Where, therefore, two of the partners of a firm deposited with the bankers of the firm securities which belonged to them individually to secure a joint debt of the firm, & also gave the bankers their separate personal guarantees up to a limited amount to pay the joint debt of the firm, & the firm subsequently, as debtors, executed a deed of assignment for the benefit of their creditors, which provided that in the administration of the joint & separate estates of the debtors the rules prevailing in bkpcy. should be followed:—*Held:* as the bankers did not hold a charge on the securities so deposited for the debts due under the separate guarantees given by the two partners, &, therefore, were not "secured creditors" within the definition in 1914 Act, s. 167, in respect of those debts, they were entitled to prove for them under the trusts of the deed of assignment against the estates of the two partners without giving credit for the value of those securities.—*Re* DUTTON, MASSEY & CO., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING CO., [1924] 2 Ch. 199; 93 L. J. Ch. 517; 131 L. T. 622; 68 Sol. Jo. 530; [1924] B. & C. R. 129, C. A.

3378. *Add. Annotation:*—**Mentd.** *Re* Gunsbourg,

3383. *Add. Annotation:*—**Mentd.** A Debtor, [1922] 2 K. B. 109.

3383a. ——.]—*Re* DUTTON, MASSEY & CO., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING CO., No. 3375a, *ante*.

3412. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1922] 2 K. B. 109.

PART IX. SECT. 1.

3332 iv. ——. *Appeal from decision of referee—Forbidding creditor to enforce security.*]—*Re* CANADIAN WESTERN STEEL CORPN. (1922), 69 D. L. R. 689; 2 C. B. R. 494.—**CAN.**

b i. *To advise as to validity of lien.*]—A Judge of the Ct. of K. B. has jurisdiction to advise an assignee for the benefit of creditors on whether certain creditors have a mechanics' lien on the assets of the estate.—*Re* BECK, [1921] 3 W. W. R. 150.—**CAN.**

PART IX. SECT. 2.

sn. *...gnment of unpaid purchaser farm sale agreement to ...nce of purchase price of other ...*]—*Held:* pltf. was a secured ... ANDERSON *v.* SERGE, [1924] 2 D. L. R. 1018; [1924] 1 W. W. R. 1260; 18 Sask. L. R. 255.—**CAN.**

so. *Lease of property on crop-payment plan.*]—Lessor held a secured creditor in respect of rent.—*Re* TURNER (1922), 65 D. L. R. 130; 15 Sask. L. R. 381; [1922] 2 W. W. R. 414.—**CAN.**

sp. ——.]—*Held:* the lessor to the extent of his share of the crop reserved as rent was protected against the creditors of the lessee, notwith- ... a provision in the lease ... by the lessee's share of the crop ... to be applied in payment of ... owing by the lessee to the lessor ... of the lease.—*Re* DEMRY ... D, [1924] 4 D. L. R. 275; [1924] 3 W. W. R. 708.—**CAN.**

st. *Purchase of property by ... agreement to transfer on ...* a ... [1923] 2 W. W. R. 204; ... C. B. R. 841.—**CAN.**

sw. *Judgment recovered before* ... *...nt* ... the ... GINS CO. *v.* ROYAL BANK OF CANADA (1922), 65 D. L. R. 679.—**CAN.**

3347 ii. *Seizure of goods under lien notes—Acquired with knowledge of insolvency by holder of unregistered bill of sale.*]—*Re* MUSTARD, [1923] 2 D. L. R. 922; 4 C. B. R. 140; *affd.* 24 O. W. N. 513.—**CAN.**

... When a bond ... trans he ... a secured ... Act, but, in All ... by ... but ... Rights ... Act, A.... s. 3. *Re* HAMILTON & OAKES, 2 D. L. R. 514; [1923] 1 W. W. R. 172; 5 C. B. R. 165.—**CAN.**

3360 i. *Appointment of receiver.*] An order appointing a receiver ... *Held*, ... credit ... order ... SON, *Re* HOLLOWAY, [1925] 4 ... 1042; [1925] 3 W. W. R. 70 ...—**CAN.**

... city of K. ... it by ... a se... ... W. R. 73. ... (p. 360) i. ... was not a ... McLEAN & ... [1913] 3 W. ... 125; 13 ... by virtue of the charge ... Act, R.S., 1914, ... *...e p.* KAM ... L. ... 96; [1... C. R. 213.— ... *Joint de...* ...older of the ... r. ... OF C... 50 D... CAN. ... s. 362) i. *Mer...* *lands* ... 64 D. L. R. 53. ... O. L. R. 480; C. B. R. 540.—**CAN.**

PART IX. SECT. 3.

h i. ——.] An assignment ... Bkpcy. Act does not interfere with or lessen the rights of a secured creditor to enforce or retain his security.—WHITE & CO. *v.* THE IONIA (1922), 69 D. L. R. 34; 20 Exch. C. R. 327.—**CAN.**

h ii. ——.]—In bkpcy. the rule of equality is absolute except where Bkpcy. Act itself gives priority to some debts over others.—[1924] 1 D. L. R. 250; 55 O. L. 323; 3 C. B. R. 737. **CAN.**

h iii. ——.]—The rights of creditors remain unimpaired in the event of a receiving order or authorised assignment being made, & any proceedings taken to constitute a creditor a secured creditor or to realise on his security shall not, if legal, be interfered with or vacated.—*Re* HAMILTON & OAKES, [1923] 2 D. L. R. 514; 1 W. W. R. 172; 5 C. B. R. R. **CAN.**

3383 xxi. —— *Mortgage on ... Right to enforce security in ... court.*]—*Held:* an ... Bkpcy. Act did not ... the holder ... of a mtge. upon a ... in ... his security ... L.T.D. *v.* ... A., [1921] 20 Exc. ... C. R. ... B. R. 415. **CAN.**

3 xxii. ... *... to ...* ... *for* ... If a creditor fails to file ... accordance with Bkpcy. ... a ... of the ... entitled ... HALEY & ... MORIN *v.* ... 277.—**CAN.**

iv. ——.]—*... ...ed by a lien note* ...

3505. *Add. Annotations :-* **Consd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735 ; *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; **Refd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Mentd.** *Re* Stokes, *Ex p.* Mellish, [1919] 2 K. B. 256.

3558. *Add. Citation :—sub nom. Re* EMETT, *Ex p.* ANDREWS, 1 Madd. 573.
Add. Annotations :—**Refd.** Dalby *v.* India & London Life Assce. (1854), 18 Jur. 1024 ; Crompton *v.* Huber (1855), 25 L. T. O. S. 43.

Part X.—Mutual Credit and Set-off in Bankruptcy.

3562. *Add. Annotations :* - **Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 539. **Refd.** Paddy *v.* Clutton, [1920] 2 Ch. 551 ; *Re* City Life Assce. (1925), 42 T. L. R. 45. **Mentd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 151.

3580. *Add. Annotation :* **Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

3598. *Add. Annotation :* **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3599. *Add. Annotation :* **Expld.** Giles *v.* Kruyer, [1921] 3 K. B. 23.

3612. *Add. Annotation :* **Mentd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

3621. *Add. Annotations :* - **Mentd.** The Countess, [1921] P. 279 ; Fooks *v.* Smith, [1924] 2 K. B. 508.

3625. *Add. Annotation :*— **Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3645. *Add. Annotation :*—**Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

3648. *Add. Annotation :*—**Refd.** Paddy *v.* Clutton, [1920] 2 Ch. 554.

3653. *Add. Annotations :* -— **Folld.** Paddy *v.* Clutton, [1920] 2 Ch. 554. **Distd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. **N.F.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3654. *Add. Annotations :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Mentd.** Paddy *v.* Clutton, [1920] 2 Ch. 551.

3660. *Add. Annotation :*— **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 151.

goods & obtain an order for sale, though he had not proved in the bkpcy. *Re* EMPIRE TRACTION CO., LTD., [1920] 3 W. W. R. 515. **CAN.**

3386 v. [A secured creditor may proceed to realise his security independently of any bkpcy. or winding-up proceedings. *Re* CANADIAN WESTERN STEEL CORP'N (1922), 69 D. L. R. 689, 2 C. B. R. 191. **CAN.**

sz. *Right to sue under Fraudulent Preferences Act, R. S. S., 1920 (c. 201).*] If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under the above Act. BARNETT *v.* BATES, [1925] 1 D. L. R. 171, [1924] 1 W. W. R. 87 ; 19 Sask. L. R. 20, 3 C. B. R. 415. **CAN.**

sa. *Settlement of claim by trustee & secured creditor.*] *Held* : creditor estopped from setting up a preference in respect of part of his claim, unless the settlement contains an express stipulation to the contrary. *Re* MARTIN MILK PRODUCTS, [1925] 1 D. L. R. 635 ; 3 C. B. R. 281. **CAN.**

sb. *Sufficiency of security. Presumption.*] —In the absence of evidence to the contrary, it is presumed that the security of a secured creditor is sufficient to realise his claim. ANDERSON *v.* SEROL, [1924] 1 W. W. R. 1260 ; [1924] 2 D. L. R. 1018, 18 Sask. L. R. 253. **CAN.**

PART IX. SECT. 4. SUB-SECT. 2.

q i. - *Guarantee by third party.* - A guarantee by a third party or a charge on the property of a third party is outside Bkpcy. Act, s. 16 (1), & the creditor is not called upon to value the security. *Re* CORMIER & CO., *Ex p.* GUARANTEE CO. OF NORTH AMERICA, [1923] 3 W. W. R. 1177, 4 D. L. R. 971. **CAN.**

sc. *Effect of the creditor's rights against surety.*] Where a creditor on filing a claim against bkpt. values his security, & such valuation is accepted, he is not thereby paid to the extent of the valuation so as to relieve the sureties from liability therefor.—ROYAL BANK OF CANADA *v.* KUTROSKI, [1923] 4 D. L. R. 334 ; [1923] 3 W. W. R. 417, *affg.*, [1923] 3 D. L. R. 744, [1923] 2 W. W. R. 586 ; 5 C. B. R. 853.— **CAN.**

PART IX. SECT. 4, SUB-SECT. 3.

e i. - [Where a trustee took possession of goods upon which liens were held by virtue of an oral election to redeem at a valuation : - *Held* : he could not contend that it was invalid because not in writing. *Re* GUARANTEED BATTERIES, LTD., [1923] 3 D. L. R. 743 ; 53 O. L. R. 15 ; 3 C. B. R. 695.— **CAN.**

PART IX. SECT. 4, SUB-SECT. 4. B.

sd. *Necessity for.*] Under Bkpcy. Act, s. 6, no leave is necessary for a secured creditor to proceed to realise on his security. IMPERIAL LUMBER CO. *v.* JOHNSON, [1923] 1 D. L. R. 112, 1 W. W. R. 920 ; 3 C. B. R. 70. **CAN.**

PART IX. SECT. 4, SUB-SECT. 5. - D.

3500 v. [A bank held liens upon bkpt. co.'s personal property which it valued in pursuance of Bkpcy. Act. The goods were sold for a greater sum than the valuation : *Held*, the bank was entitled to receive all moneys realised from the sale of the goods under lien, subject only to a claim for wages & the charges of local agents. *Re* GUARANTEED BATTERIES, LTD., [1923] 3 D. L. R. 743 ; 53 O. L. R. 45, 3 C. B. R. 695. **CAN.**

3500 vi. [A bank paid over to the trustee in bkpcy. the amount realised in excess of its claim, & subsequently it was found that payment of its claim fell short by the amount realised under a forged bill of lading. *Held* : the bank was entitled to be repaid such shortage by the trustee. *Re* ADAMS GRAIN CO., LTD., [1922] 1 W. W. R. 819 ; 66 D. L. R. 772 ; 31 Man. L. R. 480.— **CAN.**

3500 vii. - *Right to payment in full.*] - A. & B. valued their securities in bkpcy. proceedings at amounts less than the principal sums covenanted to be paid. The trustee in bkpcy. having sold the mortgaged lands.—*Held* : A. & B. were entitled on allocation to payment of the full amount of their claims with interest.—*Re* TURKEINE'S ESTATE, [1920] 1 I. R. 23.— **IR.**

se. *Claim partly unsecured. Appropriation of payments to unsecured claim not permissible.*]— MOORE *v.* WILLIAMS (A. R.) MACHINERY CO., LTD., [1925] 2 D. L. R. 1009.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2. B. (c).

3600 v. - *Rebates on insurance premiums.*]— Debtor co. were indebted to a broker upon accepted drafts for insurance premiums paid by him on their behalf, & arranged with the broker to cancel the insurance policies upon which he had paid the premiums represented by the unpaid drafts, & to have the amounts allowed by way of rebate for the unearned premiums paid by the insurance cos. to the broker :—*Held*, the broker was entitled to apply the sum paid to him for rebates in reduction of the co.'s indebtedness, or by way of set-off against his claim for the amount of the premiums paid by him.—*Re* FAIRWEATHERS, LTD. (1921), 67 D. L. R. 590 ; 51 O. L. R. 435 ; 2 C. B. R. 202.—**CAN.**

3600 vi. - - *Creditor for services rendered. Debtor for goods delivered by bankrupt. Agreement for services to be paid for by supply of goods.*] —*Held* : there was a right of set-off.- *Re* MCMURRAY & CO., *Ex p.* JAMES (M. A.) & SONS, [1924] 1 D. L. R. 737.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.

3646 i. *Arrears of rent— Against sum due for grass seed.*] *Held* : the landlord could exercise the right of set-off. - *Re* GRANTHAM, *Ex p.* DOYLE, [1923] 3 D. L. R. 94 ; 4 C. B. R. 168.—**CAN.**

3648 iii. —— —— .]— If shares in a co. are disclaimed by the official assignee upon the bkpcy. of a shareholder, & if for purposes of proof an estimate is made under Bkpcy. Act, 1908, s. 111, of the amount claimable in respect of future calls thereon, the co. may set off against such amount a sum due by the co. to bkpt. for goods supplied by him.—*Re* ANDERSON, [1924] N. Z. L. R. 1163.—**N.Z.**

3661. *Add. Annotation :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson (1924), 131 L. T. 652.

3678. *Add. Annotations :*— **Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 551; *Re* National Benefit Assce., [1924] 2 Ch. 339. **Apld.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

3679. *Add. Annotation :*—**Refd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

3680. *Add. Annotations :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

3681. *Add. Annotations :* —**Mentd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508; Verschures Creameries *v.* Hull & Netherlands S.S. Co., [1921] 2 K. B. 608; Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249; Anderson *v.* Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557.

3695. *Add. Annotation :*—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3696a. Shares deposited as security for debit balance owing to bankrupt—Unauthorised sale by bankrupt.]—Deft. opened a speculative account with a firm of stockbrokers & deposited with them as security for any debit balance which might from time to time be owing by him on that account the indicia of title to various bonds & shares, including certain rubber shares. In 1920 the firm sold the rubber shares without the knowledge or authority of deft., who was kept in ignorance of the sale till after the bkpcy. of the firm. On Feb. 16, 1922, a receiving order was made against the firm & they were adjudicated bkpt. In Feb. 1923, the trustee in bkpcy. of the firm rendered deft. a final account, which, after giving credit to deft. for the proceeds of the sale of the shares, showed a balance due from deft. In an action to recover that balance the trustee claimed that the rights of the parties ought to be adjusted under the mutual credits clause of 1914 Act, as at the date of the receiving order. The judge, in ordering an account to be taken, directed that the value of the shares, to be ascertained when the account was certified, that being the date when the shares ought to have been returned to deft., should be set off against the claim of the trustee :— *Held :* the brokers could not have maintained an action for their debt if they were not in a position to hand over the shares against payment, & the trustee in bkpcy. had no higher right; no question of set-off arose under the mutual credits clause of 1914 Act, the right of deft. being to a return of the shares *in specie*; & in the special circumstances of the case the order of the judge was correct.—Ellis & Co.'s Trustee *v.* Dixon-Johnson, [1925] A. C. 489; 94 L. J. Ch. 221; 133 L. T. 60; 41 T. L. R. 336; 69 Sol. Jo. 305; [1925] B. & C. R. 51, H. L.

3697. *Add. Annotation :* **Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3702. *Add. Annotation :* **Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3707. *Add. Annotation :* **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3714. *Add. Annotations :* As to (2) **Consd.** *Re* City Life Assce., [1926] Ch. 191. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

3719. *Add. Annotations :* **Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 551; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339; *Re* City Life Assce. (1925), 42 T. L. R. 45.

3739. *Add. Annotations :* **Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 551; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339; *Re* City Life Assce. (1925), 42 T. L. R. 45.

3740. *Add. Annotation :* **Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9.

3769. *Add. Annotation :* **Distd.** *Re* Pennington & Owen, [1925] Ch. 825.

Part XI.—Joint and Separate Estates Bankruptcy of Firm or Partner.

3945a. Estate of undischarged bankrupt partner—Second bankruptcy of partner—Unsatisfied balance of joint liabilities in first bankruptcy.]—T. & M., partners in a firm, had been adjudged bkpt.; bkpt. M.'s discharge had been refused, & there were unsatisfied joint debts in the bkpcy. of the firm; & a subsequent receiving order was made against M. under which he was again adjudged bkpt. :— *Held :* under 1914 Act, s. 33 (6) & s. 39 (1), the unsatisfied balance of the joint liabilities of the firm could be proved in the subsequent bkpcy. of M. by the trustee in the first bkpcy.

Re Moss, *Ex p.* Experts (1923), 93 L. J. Ch. 98; [1923] B. & C. R. 135.

4019 *Add. Annotation* **Mentd.** The Kin Tye *v.* Seth (192 , 89 L. J. P. C. 113.

4068. *Add. Annotation* **Mentd.** The Kin Tye *v.* Seth (192 89 L. J. P. C. 113.

: **Refd.** *Re* 20] 2 K. B. 126; Moore *v.* [1920] 1 K. B. 919 **Mentd.** *R.* [1921] 1 A. C. 271; Anderson *v.* Equi Life Assce Soc. of United States (1926), 13

L. T. 557; Bennett *v.* Whitehead, [1920] 2 K. B. 380.

4080. *Add. Annotation :*—**Mentd.** The Kin Tye Loong *v.* Seth (1920), 89 L. J. P. C. 113.

4102a. —— —— **Separate personal guarantees of partners.**]—*Re* DUTTON, MASSEY & Co., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING Co., No. 3375a,

4108. *Add. Annotation :*—**Consd.** *Re* Dutton, Massey, *Ex p.* Manchester & Liverpool District Banking Co., [1924] 2 Ch. 199.

4133. *Add. Annotation :*—**Mentd.** Brocklebank *v.* R., [1925] 1 K. B. 52.

Part XII.—Priority of Debts.

4279. *Add. Annotation :*—**Reld.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369.

4284. *Add. Annotation :*—**Reld.** *Re* Webb (Smithfield, London), [1922] 2 Ch. ;

4298. *Add. Annotation :*—**Consd.** Moriarty *v.* Regent's Garage & Engineering Co (1920), 90 L. J. K. B. 783.

PART XII. SECT. 1, SUB-SECT. 3.

ac. *Claim by Workmen's Compensation Board for arrears of payment of ts.*]—Claim refused.—WORKMEN'S COMPENSATION BOARD *v.* EDGAR, [1924] 3 D. L. R. 273; [1924] 2 W. W. R. 566; 20 Alta. L. R. 385.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 4.

ad. *General rule.*] —The Crown has ogative right to be paid upon a ation in bkpcy. in priority to unsecured creditors, but it is a right of preference in the ation of the estate.—*Re* METAL & WASTE Co. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—**CAN.**

af. —— ——.] —Where the Crown is an unsecured creditor for taxes owing by bkpt., the Crown will take preference over all other secured creditors in respect of those taxes. *Re* NOEL, *Ex p.* GRAVELBOURG TOWN (1922), 65 D. L. R. 754; 2 C. B. R. 345.—**CAN.**

ak. *entitled to set off against claim of for arrears of rent.*]—*Re* GRANT *Ex p.* DOYLE, [1923] 3 D. L. R. 4 C. B. R. 168. **CAN.**

4280 ll. —— —— *Water rate.*]— AN ARRANG DEBTOR, [1921] 1 R. 1.—**IR.**

4280 lll. —— MATHESON, *Ex p.* PRINCE (CITY), [1924] W. W. R. 129; 1 D. L. R. 26 18 Sask. L. R. **CAN.**

4280 lv. —— *Re* DECKER'S ELEVAT N, [1925] 1 D. L. R. 653 36 O. R. 140; 5 C. B. R. 208.—**CAN.**

bi. —— —— ——.] *R* METAL W Ltd., *Ex p.* R., [1925] 1 D. L. R. 309; 5 C. B. R. 378.—**CAN.**

b ii. —— —— —.]—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* EDMONTON CITY, [1925] 2 D. L. R. 525; [1925] 1 W. W. R. 717; 21 Alta. L. R. 160; 5 C. B. R. 587.—**CAN.**

c i. —— *Business taxes.*]—*Re* WEST (F. E.) & Co. (1921), 62 D. L. R. 207; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

of tax a
Re M
D. L.
924] 1 W. W. R. 129; 18 Sask. L.
—**CAN.**

c v. —— *Dominion*

SHOE Co., *Ex p.* TOWN OF PENETANGUISHENE, [1923] 4 D. L. R. 927.—**CAN.**

c vi. —— *Income tax.*]—*Re* LE BLANC, [1924] 3 D. L. R. 256.—**CAN.**

c vii. —— —.]—*Held :* balance of
ORR, [1924] 2 I. R. 120.—I

cviii. —— —— ——.]—R. *v.* & CORE (1921), 20 Exch. C. **CAN.**

c ix. —— *Poll tax.*]—*Re* LE BLANC, [1924] 3 D. L. R. 256.—**CAN.**

c x. —— *Sales taxes.*]—*Held :* the Crown was entitled to priority over all other unsecured creditors in respect of sales taxes.—*Re* WEST (F. E.) & Co. (1921), 68 D. L. R. 772; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

c xi. —— —— *Held :* a creditor could not rank as a secured creditor in priority to the claim of the Crown taxes on sales of goods to debtor.—
[1924] 3 D. L. R. 4 C. B. R.
—**CAN.**

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c xii. ——
ment.]—
al lien on the city ..... a
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W. W. R.
4 C. B. R. 492.—**CAN.**

d i. ——]—*Held :* debtor's chattels subject to seizure for arrears of taxes by the municipality even in the hands of the trustee.—*Re* HARRISON (1922), D. L. O. L. R. 634; 2 C. B. R. 360.—**CAN.**

d ii. —— —.]—*Re* LAURANCE 55 O. L. R. 196; 4 C. B. R. 349.—**CAN.**

al. *Claim of inspector of taxation.*]—*Re* MCKENZIE, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 5.

Rights of court in favour of .)—The right of a creditor for of wages to stand as a preferred creditor w by the ct. with a bias in favour of the creditor.—*Re* CORSON SHOE Co., [1924] 1 D. L. R. 555.—**CAN.**

4285 ix. —— *After judgment recovered.*]—The claim of a wage-earner to priority for his wages remains a for wages even after judgment
. *v.* THORNE
O. L. L.

of bankruptcy.]—*Held :* a could only rank as a preferred creditor for wages earned within three months of the bkpcy.—RODDEN *v.* GOODMAN (1922), 67 D. L. R. 635.—**CAN.**

4285 xi. —— ——.]—*Held :* the director & president & the director & secretary-treasurer of bkpt. co. were entitled to priority for wages or salaries in respect of services rendered to bkpt. co. during the three before the date of the
Re EASTERN ONTARIO Co., [1923] 1 D. L. R. 591; 52 O. L. R. 67; 21 O. W. N. 483.—**CAN.**

4285 xii. —— ——.]—*Held :* a claim for wages was not entitled to priority not being earned within three months immediately preceding the receiving order.—*Re* CONTINENTAL PUBLISHING Co., *Ex p.* DAVIS & SIMMONS, [1924] 1 D. L. R. 339; 4 C. B. R. 343.—**CAN.**

4285 xiii. —— ——
when goods shipped—Services more than three months before bankruptcy—Goods shipped within three months of bankruptcy.]—*Held :* the salesman could not rank as a preferred creditor in respect of such commission.—*Re* HERCULES RUBBER Co., *Ex p.* ALLAN, [1924] 1 D. L. R. 999; 4 C. B. R. 555.—**CAN.**

4285 xiv. —— *Allowance for expenses.*]—Where a person is employed as a travelling salesman & is given his expenses in addition to his salary, he may claim to stand as a preferred creditor as regards both his salary & his expenses.—*Re* CORSON SHOE Co., [1924] 1 D. L. R. 555.—**CAN.**

4289 ia. —— —— ——.]—A travelling salesman, selling goods on commission, was allowed by debtor co. to sell their goods at specified prices, any goods sold by him to be invoiced to the customer at the price at which he sold, & he to be allowed the difference between the net price & his selling price :—*Held :* not entitled to priority.
LTD., [1923] 1 D. L. R. 827; 53 O. L. R. 355; 3 C. B. R. 617.—**CAN.**

4292 i. —— *Accountant*—
he was a servant & entitled to rank a preferred creditor.—*Re*
FURNITURE Co., *Ex p.*
4 D. L. R. 1198; W. W. R. 030.—**CAN.**

4298 i. —— *Company Director.*]—The mere fact that a director who claims priority for wages is a superior officer of a co. does not of itself deprive him of priority. The real question is whether the person making the claim has contracted to render service to the co. beyond what would come within the scope of his duties as a statutory officer.—*Re* MILK PRODUCTS

4335a. —— —— Bond to secure annuity taken in payment.]—Where a woman lends money to her husband [to help him in his business] & then accepts from him, in lieu of the money lent, a bond to secure an annuity payable by him for her life, & he subsequently is adjudicated bkpt. or dies insolvent, she may claim in the bkpcy., or in the administration by the ct. of his estate, for the value of the annuity in competition with the creditors of the husband.—*Re* SLADE, CREWKERNE UNITED BREWERIES, LTD. *v.* SLADE, [1921] 1 Ch. 160; 89 L. J. Ch. 556; 124 L. T. 232; 64 Sol. Jo. 668.

4336. *Add. Annotation :*—**Consd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160.

4338. *Add. Annotation :*—**Refd.** *Re* Wombwell (1921), 37 T. L. R. 625.

4342. *Add. Annotations :*—**Refd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Mentd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87.

4345. *Add. Annotation :*—**Refd.** Dennistoun *v.* Dennistoun (1925), 69 Sol. Jo. 477.

4353. *Add. Annotation :*—**Refd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160.

4357. *Add. Annotation :*—**Refd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160.

Part XIII.—Distribution of Estate and Payment of Dividends.

4373. *Add. Annotation :*—**Mentd.** The Kin Tye Loong *v.* Seth (1920), 89 L. J. P. C. 113.

4403. *Add. Annotation :*—**Refd.** *Re* Gurwicz, *Ex p.* stee (1919), 88 L. J. K. B. 740.

4424. *Add. Annotation :*—**Mentd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

4484a. —— Proof subsequently reduced.]—*Re* SEARLE, HOARE & Co., No. 32103.

Co., [1923] 1 D. L. R. 591; 21 O. W. N. 483; 52 O. L. R. 67.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 6.

si. —— —— —— *Special covenant.]*—*Held :* notwithstanding a clause in a lease as to acceleration rent, the landlord was only entitled to rent for the time the premises were occupied by the trustee.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* MONKA (1924), 34 B. C. R. 99.—**CAN.**

sn. *Arrears of rent—Priority over—War revenue taxes.]*—*Re* SOLOMONS BOCHNER FUR CO., [1924] 1 D. L. R. 685; 53 O. L. R. 497; 24 O. W. N. 42.—**CAN.**

sp. —— —— ——.]—The Crown claiming under War Revenue Tax Act & a landlord for arrears of rent rank *inter se* according to their priority in time.—*Re* DAVIS, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—**CAN.**

sq. —— —— *Sales tax.]*—*Re* CALCUS CO., LTD., *Ex p.* MCGUIRE, [1925] 3 D. L. R. 809; 57 O. L. R. 272; 5 C. B. R. 763; *revsg.*, [1925] 2 D. L. R. 246.—**CAN.**

sr. —— —— *Taxes due under War Tax Act, 1917.]*—*Re* STONE COAL CO., LTD., *Ex p.* NATIONAL TRUST CO., LTD., [1925] 3 D. L. R. 154; [1925] 2 W. W. R. 68; C. B. R. 719; *revsg.*, [1925] 1 W. W. R. 964 5 O. B. R. 639.—**CAN.**

st. —— —— *Fees & expenses of* .]— trustee's claim for his always precedes the Crown's claim for taxes under War Revenue Tax Act, but if the landlord's claim arose anterior to that of the Crown, then the trustee's claim count after the landlord's & will cede the Crown's claim.—*Re* D. [1924] 3 D. L. R. 556; 4 C. B. R. **CAN.**

sw. *Covenant by tenant to pa other expenses.]*—A landlord can only rank as a preferred creditor in respect of arrears of rent, & this is so even where the lease stipulates that the tenant shall make other payments, namely a portion of the taxes & of heating the premises.—*Re* ST Co. (1924), 27 O. W. N.

affg., [1924] 3 D. L. R. 40; 4 C. B. R. 655.—**CAN.**

sx. *Costs of distress.]*—*Re* MCKENZIE, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 9.

ti. — — — — *Debt not being debt for taxes, rates or assessments.]*—The Crown in the right of a province has no priority over other creditors of bkpt. with respect to a debt due to it which is not a debt for taxes, rates or assessments.—*Re* CARDSTON U. F. A. CO-OPERATIVE ASSOCN., LTD., *Re* PROVINCE OF ALBERTA, [1925] 4 D. L. R. 897; [1925] 3 W. W. R. 651.—**CAN.**

]—Sales taxes due to the Dominion Govt. under Special War Revenue Act (Dom.), 1915 (c. 8), as enacted by 10 & 11 Geo. 5, c. 71, are merely debts due to the Crown, not expressly charged upon the assets of debtor.—*Re* WEST (F. E.) & Co. (1921), 62 D. L. R. 207; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

r ii. —— *Charge against goods admitted as settler's effects.]*—*Held :* to take priority over the lien for costs given an execution creditor.—*Re* WILEY, *Re* ANTHONY SALT CO., *Re*

[1925] 4 D. L. R. 790; [1925] 3 W. W. R. —CAN.

r iii. — *Health Insurance contributions.]*—On a claim for arrears due in respect of H contributions, alleged to as Crown debts ranking next after the usual preferential payments :—*Held :* Health Insurance contribu only as a civil N. 1

ss. *Surety paying Crown debt.]*—A surety who has paid the indebtedness of the principal debtor to the entitled to stand in the same as the Crown & to exercise its for the recovery of the debt.—*Re* FATHE FREERES PHONOGRAPH CO. OF CANADA (1921), 64 D. L. R. 628; 50 O. L. R. 644; 2 C. B. R. 21.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 10.

Fees & expenses of trustee.] See cases in Part VII., Sect. 5, subsect. 2, A., *ante*.

4331 i. *Judgment creditor ered certificate of judgment.]* A judgment creditor of a bkpt., who has ered a certificate of judgment

titled to a lien against the estate for the costs incurred in obtaining the judgment.—*Re* YAWORSKI (1922), 66 D. L. R. 570; [1922] 1 W. W. R. 296; 2 C. B. R. 181.—**CAN.**

d l. — — — — .] *Held :* the trustee must pay the sheriff's fees & of r in priority all

WARD CO. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—**CAN.**

sb. *Costs of action continued by With authority of court.]* *Held :* costs incurred after the insolvency MYERSON *v.* GIRLEN & Ho 3), 68 D. L. R. 205. **CAN.**

m rice of *With* of trustee for of business after bankruptcy.] *Held :* accounts for such goods pre *Re* MOORE, [1923] 3 D. L. R. 53 O. L. R. 36. **CAN.**

r.] In no a person who is money to a the latter's rank as a for or so

47 D. L. R. 635.—**CAN.**

sd. *Arrears of n of* A person of mind

to he been kept wor due to the Crown, & in priority to the in te M. [1923] 1 I. IR.

PART XII. SECT. 2, SUB-SECT. 1.

Payment of debt on wife as surety for husband.]—*Held :* wife not a deferred creditor. *Re* BARRON, *Ex p.* BARRON, [1924] 4 D. L. R. 1307; 4 C. B. R. 624. **CAN.**

Part XIV. Administration in Bankruptcy of Estates of deceased Insolvents.

4545. *Add. Annotation :* **N.F.** Latter *v.* Jackes (1926), 12 T. L. R. 723.

4547. *Add. Annotation :* **Refd.** *Re* Sarjeant, [1923] 2 Ch. 302.

4549. *Add. Annotation :* **Mentd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

4556. *Add. Annotation :* **Refd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 360.

4559a. Administration of estate of undischarged bankrupt—Right to after-acquired property.]—*Re* SARJEANT, No. 1808a.

Part XVI. — Miscellaneous Practice and Procedure.

4602. *Add. Annotation :* **Mentd.** *Re* Foster, Barnato *v.* Foster, [1920] 3 K. B. 306.

4627. *Add. Annotation :* **Mentd.** Scott *v.* Northumberland & Durham Miners' Permanent Relief Fund Friendly & Approved Soc., [1920] 1 K. B. 174.

4633. *Add. Annotations :* **Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765. **Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515; *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22.

4638. *Add. Annotations :* **Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765. **Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515; *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22.

4661. *Add. Annotation :* **Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4665. *Add. Annotation :* **Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

a. Necessary before other side entitled to refer to contents.]—On June 20, 1923, resps., having received from bkpt. an order for goods, on the same day delivered them to bkpt. together with an invoice bearing the same date, which subsequently at bkpt.'s request was post-dated to July 10. On July 20, bkpt., although fully realising his insolvency, sent to resps. & to 107 other creditors cheques which were all post-dated to July 31 in settlement of their several accounts. On July 31 bkpt. gave notice to his creditors that he was about to suspend payment. Not one of those post-dated cheques was paid on presentation; but on July 30, the day preceding the act of bkpcy., bkpt. paid in cash to resps., who had no knowledge of bkpt.'s financial difficulties, the amount he owed them less discount. On Aug. 30, 1923, on a creditor's petition presented on Aug. 3, an order of adjudication was made against bkpt. Upon a motion by the trustee in bkpcy. for a declaration that the payment to resps. was a fraudulent preference under 1914 Act, s. 44 (1), resps. filed an affidavit in opposition, which contained statements which revealed a voluntary offer on July 30 on the part of bkpt. to resps. to pay the amount due to them in cash; & the question was then raised whether the trustee had the right, which he claimed, to read those statements as admissions by resps. of the absence of pressure & of the entirely voluntary nature of the payment: — *Held :* (1) the practice in the Bkpcy. Ct., differing in this respect from the practice in the Ch. Div., was that where an affidavit had been filed by a resp. to an application, applt. was only entitled to refer to the contents thereof after resp. on opening his case had elected to read it; (2) where a bkpt. in imminent expectation of bkpcy. voluntarily pays a particular creditor with the result of giving him a preference in fact, & the reason for such payment is unexplained, a *prima facie* case of fraudulent preference is established; therefore, the trustee having proved a *prima facie* case of fraudulent preference & the creditors having withdrawn their affidavit in opposition, & there being therefore no evidence to the contrary, the trustee was entitled to succeed on his application. *Re* COHEN, *Ex p.* TRUSTEE, [1924] 2 Ch. 515; 94 L. J. Ch. 73; [1924] B. & C. R. 113; *sub nom. Re* COHEN, *Ex p.* TRUSTEE *v.* SNOW (W. R.) & Co., 69 Sol. Jo. 35, C. A.

Application ... is to (2) **Distd.** *Re* Drage, Palmer & Roberts *v.* ... (1926), 134 L. T. 765.

... trustee, [1924] 2 Ch. 515.

4705. *Add. Annotation :* **Refd.** Knight *v.* Knight, [1925] Ch. 835.

4753. *Add. Annotation :* **Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

PART XVI. SECT. 3, SUB-SECT. 1.

1. ... Act of a ... to ... in ... in

CANADIAN CREDIT ... W. R. 899; 14 Sask. L. R. 356.— CAN.

PART XVI. SECT. 3, SUB-SECT. 2.

se. *Motion for trial of bankruptcy* ... L. J. ... C. B. R. CAN.

PART XVI. SECT. 5, SUB-SECT.

st. *Rights of solicitor—.* *fees—Estate not realised by* (1925) 3 D. L. CAN.

Part XVII. Appeals.

4794. *Add. Annotation :* **Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

4818. *Add. Annotation :* **Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

4819. *Add. Annotation :* **Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

4831. *Add. Annotation :* **Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4835. *Add. Annotation :* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

4840. *Add. Annotation :* **Mentd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

4857. *Add. Annotation :* **Refd.** *Re* Barley, [1923] 1 Ch. 177.

4860. *Add. Annotation :* **Consd.** *Re* Barley, [1923] 1 Ch. 177.

4869. *Add. Annotation :* **Consd.** *Re* Barley, [1923] 1 Ch. 177.

4873. *Add. Annotation :* **Consd.** *Re* Barley, [1923] 1 Ch. 177.

4876. *Add. Annotation :* **Refd.** *Re* Barley, [1923] 1 Ch. 177.

4884. *Add. Annotation :* **Mentd.** *Re* Mellor, Alvarez *v.* Dodgson, [1922] 1 Ch. 312.

4888. *Add. Annotation :* **Consd.** *Re* Barley, [1923] 1 Ch. 177.

4894. *Add. Annotation :* **Refd.** *Re* Barley, [1923] 1 Ch. 177.

Part XVIII. Order of Discharge.

5023. *Add. Annotation :* **Consd.** *Re* Kutner, [1921] 3 K. B. 93.

5043. *Add. Annotation :* **Refd.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97.

5050. *Add. Annotation :* **Consd.** *Re* Kutner, [1921] 3 K. B. 93.

5262. *Add. Annotation :* As *to* (2) **Refd.** *Re* Kutner, [1921] 3 K. B. 93.

5264a. Condition suspending discharge until larger dividend than ten shillings in the pound paid.—The Ct. of Bkpcy. is not empowered by 1914 Act, s. 26, to suspend the discharge of a bkpt. until a dividend higher than 10*s.* in the pound—in this case 15*s.* in the pound—has been paid to his creditors. *Re* KUTNER, [1921] 3 K. B. 93; 90 L. J. K. B. 1261; 125 L. T. 458; 37 T. L. R. 667; [1921] B. & C. R. 113; *sub nom. Re* KUTNER, *Ex p.* DEBTOR *v.* OFFICIAL RECEIVER, 65 Sol. Jo. 601, C. A.

5277. *Add. Annotations :* **Mentd.** *Re* Taylor, *Ex p.* Bolton, [1909] 1 K. B. 103; *Re* Barley, [1923] 1 Ch. 177.

5283. *Add. Annotations :* **Refd.** *Re* Barley, [1923] 1 Ch. 177. **Mentd.** *Re* Walmsley, *Ex p.* The Bankrupt (1907), 98 L. T. 55.

5328. *Add. Annotations :* **Mentd.** *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113; Performing Right Soc. *v.* London Theatre of Varie[illegible], [1924] A. C. 1.

53[illegible]. *Add. Citation : sub nom. Re* [illegible]QUANT TRADERS' SHIP, LOAN & INSURANCE Assocn., *Ex p.* CHAPPELL, 19 L. T. [illegible] S. 2

5387a. On forfeiture clause Conditional charge. [illegible] by The [illegible] from a life tena[illegible] with t[illegible] life inter[illegible] discharge being on his pa[illegible]m of money, do[illegible] his discharge must be had [illegible] r Bkpcy. Act, only to the in[illegible]rests, but also [illegible] C. Co., [192[illegible] 1 D. L. R. 123, 1 W. [illegible] R. 366; [illegible] C. B. R. 731. CAN.

5014 i. *Band appl. Re* Jones [1926] N. Z. L. R. 31[illegible]. N.Z.

PART XVII. SECT. 2

$500.] An a[illegible] lies on whether a cre[illegible] for an [illegible] $500 shall [illegible] on bkpt.'s estate as a [illegible] being merely as an [illegible] an amount exceed[illegible] e. 1050;

PART XVII. SECT. 3

[illegible] 1925] 2 D. L. R. 22

[illegible] of [illegible] ct. in [illegible]-debt[illegible] over [illegible]NGC[illegible] L. R. [illegible] W. W. R. 229; CREDIT MEN'S TRUST A[illegible] JANG BOW KEE & YIN SHEE, 31 B. C. R. 40. CAN.

PART XVIII. SECT. 3, SUB-SECT. 1.

5013 i. *Whose*

[illegible] the [illegible]n of a d[illegible]

PART XVIII. SECT. 5, SUB-SECT. 1. C. (b) n.

5073 ii. [illegible] The test [illegible] who[illegible] lethe[illegible] est how[illegible] any time [illegible] elects to [illegible]

5081 [illegible] whet[illegible] [illegible] may obtain if [illegible] 1 D. L. R. 946. CAN.

XVIII. SECT. 5, SUB-SECT. 2.

[illegible] his financial p[illegible] of [illegible]

PART XVIII. SECT. 5, SUB-SECT. 3

[illegible] ct fixed the time for discharge years from the date of the *Re* Thomson, [1924] 1 D. L. [illegible] [1924] 1 W. W. R. 107; 31 Man. L. R. [illegible] CAN.

PART XVIII. SECT. 6.

[illegible] ng for his discharge. [illegible] d for his discharge [illegible] 1 D. L. R. 1201, [1923] 1 W. R. 966. C. B. R. 731. CAN.

[illegible] C. B. R. 1 CAN.

PART XVIII. SECT. 7, SUB-SECT. D.

[illegible] *for* [illegible] *Mo*

[illegible] of

the effect of putting an end to the operation of the forfeiture clause if the money has not in fact been paid.

(2) Where there is a trust of a fund under the terms of which the trustees are bound to apply the income of the fund in a particular way on a given future contingency, the person who takes the income as a result of that trust on the happening of the contingency is a person who has an interest of a kind which, but for the forfeiture clause, is capable of vesting in his trustee in bkpcy.—*Re* CLARK, CLARK *v.* CLARK, [1926] Ch. 833; 95 L. J. Ch. 325; 135 L. T. 666; 70 Sol. Jo. 344.

5397. *Add. Citations:*—**Bail Ct. Cas.** 151; 17 Jur. 165.

5399. *Add. Annotation:*—**Mentd.** Spencer *v.* Hemmerde, [1922] 2 A. C. 507.

5455. *Add. Annotation:*—**Refd.** Indian & General Investment Trust *v.* Borax Consolidated, [1920] 1 K. B. 539.

Part XIX.—Statement of Affairs and Discovery of Property.

5475. *Citations:*—For "24 Q. B. D. 406" read "24 Q. B. D. 466."

5475a. —— —— —— **Letter returned marked "gone away."**]—Bkpt. cannot escape service of an order of the ct. by leaving his last known address, & there is nothing in 1914 Act, nor in Bkpcy. Rules, to say that a registered letter which does not reach debtor is not good service. Where, therefore, a copy of an order that bkpt. should attend at a specified time & place for his adjourned public examination, had been sent by registered letter & returned through the post, marked "gone away," a warrant was ordered to be issued for his arrest.—*Re* LEVY (1924), 68 Sol. Jo. 419; *sub nom. Re* LEVY, *Ex p.* OFFICIAL RECEIVER, [1924] B. & C. R. 19,

5495a. —— —— —— —— **Answers disclosing secret formulas for manufacturing proprietary articles.**]—*Re* [illegible]ENE, No. 5811a,

5496. For "—— —— **All matters considered on application for discharge**" read "—— —— —— **All matters considered on application for discharge.**"

5499a. —— —— —— **Questions as to loss of property.**]—*Held:* though the words "with intent to deceive or to defraud" were absent from 1914 Act, s. 157 (1) (*c*), the jury had still to consider whether deft. knowingly & with intent to deceive or to evade the Act either made statements that were unsatisfactory in the sense that they were untrue or grossly exaggerated or intentionally evasive, or made statements without caring whether they were true or not.—R. *v.* PHILLIPS (1921), 85 J. P. 120.

5512. *Add. Annotation:*—**Mentd.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97.

5594. *Add. Annotation:*—**Mentd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

Part XX. Property Available for Distribution amongst Creditors.

5684. For the words "**Admission or rejection of proofs.**]—*See*, [illegible], Part VIII., following this case, read "Admission or rejection of proofs, *see, generally*, Part VIII.,

5686. *Add. Annotation:*—**Mentd.** Ord *v.* Ord, [1923] 2 K. B. 432.

5696. *Add. Annotation:*—**Refd.** *Re* Wethered, [illegible]6] Ch. 167.

5747. *Add. Annotations:*—**Refd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369. **Mentd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508.

5749. *Add. Annotation:*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9.

5754. *Add. Annotation:*—**Apld.** *Re* Collins, [1925] Ch. 556.

5760. *Add. Annotation:*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9.

5760a. —— **Money paid in compliance with subsequent bankruptcy notice.**]—*Re* DEBTORS (No. 771 of 1926), No. 923a, *ante*.

5766. *Add. Annotation:*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

5769. *Add. Annotation:*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

PART XX. SECT. 2.

5689 iv. —— —— *Registration as security for loan.*]—A confession given by a [illegible] the time solvent as security for advance of money & recorded lands under Nova Scotia Act, R. S., 1900 (c. 137), s. 16,

in bkpcy. subsequently made.—RHODENIZER ESTATE & NOVA [illegible] D. L. R. 1055; 56 N. S. R. 170.—CAN.

5713 v. ——.]—The authorised trustee is not entitled to possession or [illegible] of any property by [illegible] for store fixtures & fittings purchased by debtor, especially if nothing has been paid on account of such purchases, & bkpt. has no official interest in the property.—*Re* ALIOTTE & CLERIE (1921), 63 D. L. R. 340; 55 N. S. R. 64.—CAN.

5713 vi. —— *Lease granted to bankrupt free of rent—Stipulation that lease* [illegible] not be used for [illegible] of bkpt.'s creditors.—LEGAULT (1922), 66 D. L. R. 136.—CAN.

5713 vii. —— ——.]—As an assignment only vests the property of debtor in the assignee subject to the rights of secured creditors, it can only affect the equity of redemption in the property.—WHITE & Co. *v.* THE IONIA (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—CAN.

5775a.——.]—On Sept. 20, 1917, debtor transferred his assets, including certain furniture, to a co. formed by him. On Sept. 27 he committed an act of bkpcy. upon which a petition was presented on Oct. 8, & a receiving order was made against him on Oct. 24, followed by an adjudication on Dec. 12. After the date of the receiving order part of the furniture was sold by the co. to a *bonâ fide* purchaser for value without notice, by whom it was resold to another purchaser in the same position. On Feb. 3, 1919, the transfer of Sept. 20, 1917, was held to be fraudulent & void & an act of bkpcy., & the co. was ordered to deliver to the trustee all the property comprised in that sale. The value of the property having been found by the registrar, a further order was made against the co. to pay the amount of that value to the trustee. No payment having been made under that order the trustee claimed to recover the furniture or its value from the ultimate purchaser:—*Held:* the title of the trustee related back to the act of bkpcy. of Sept. 20, 1917, & neither the original nor any subsequent transferee could establish any title as against the trustee.—*Re* GUNSBOURG, [1920] 2 K. B. 426; *sub nom. Re* GUNSBOURG, *Ex p.* TRUSTEE, 89 L. J. K. B. 725; [1920] B. & C. R. 50; *sub nom. Re* GUNSBOURG, *Ex p.* COOK, 123 L. T. 353; 36 T. L. R. 485; 64 Sol. Jo. 498, C. A.

Annotations:—**Apld.** *Re* Dombrowski, *Ex* Trustee 92 L. J. Ch. 415. **Mentd.** *Re* Wig[illegible], *Ex p.* Hart, [1921] 2 K. B. 835.

5775b. ——.]—Bkpt., when he was hopelessly insolvent, transferred his business to a one-man co., which was an act of bkpcy. Subsequently the two resps. advanced £1,000 each & received four debentures of £250 each respectively containing a charge on the undertaking & assets of the co. Resps. had no notice of the fact that the transfer to the co. was a fraudulent conveyance within 1914 Act:—*Held:* although resps. were *bonâ fide* purchasers for value without notice, as the transfer was an act of bkpcy. to which the title of the trustee related back, the trustee was entitled to the assets so transferred as property divisible amongst the creditors of bkpt.—*Re* DOMBROWSKI, *Ex p.* TRUSTEE (1923), 92 L. J. Ch. 415; [1923] B. & C. R. 32.

5776. *Add. Annotations:*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Mentd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87.

5783. *Add. Annotation:*—**Mentd.** Sorrell *v.* Smith, [1925] A. C. 700.

5786. *Add. Annotation:*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

5791. *Add. Annotations*—**Mentd.** Burchell *v.* Thompson, [1920] 2 K. B. 80; Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

5805. *Add. Annotation:*—**Refd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

5811a. —— Secret formulas for manufacturing proprietary articles.]—Debtor, against whom a receiving order had been made, had carried on business in the manufacture & sale in England, France & America of certain proprietary articles made according to secret formulas invented by him & his brother with whom he was in partnership. In his public examination he was required to disclose these formulas in writing to his trustee. The debtor & his brother had each of them agreed not to disclose the secret. Upon the dissolution of the partnership bkpt. retained the assets & goodwill of the business in England & America, while his brother continued to carry it on in France. The formulas had never been committed to writing. Bkpt. refused to disclose them on the ground that they existed only in his brain as the result of his skill & capacity, & that to disclose them would be a breach of his agreement with his brother: *Held:* the formulas were part of the goodwill & assets of his business, & he was bound to communicate them to his trustee. *Re* KEENE, [1922] 2 Ch. 475: 91 L. J. Ch. 481; 127 L. T. 831; 38 T. R. 663; 66 Sol. Jo. 503; [1922] B. & C. R. 103, C. A.

5819. *Add. Annotation:* **Mentd.** *Re* Rush, Warre *v.* R[illegible] Ch. 302.

5821a. Life interest in remainder. *Re* [illegible]EMENT, PUBLIC TRUST *v.* SILBER, W. N. 77.

5826a. *Re* CLARK, CLARK *v.* CLARK, No.

5827 *Add. Annotation:* **Refd.** *Re* Evans, Trustee *v.* Evans, [1920] 2 Ch. 304.

5831. *Add. Annotation:*—**Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5835. *Add. Annotation:* **Refd.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

5845. *Add. Annotation:* **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5850. *Add. Annotation:*—**Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5858. *Add. Annotation:* **Consd.** *Re* Wombwell (1921), 37 T. L. R. 625.

5859a. —— Of property partly of bankrupt & partly of third party—Good to extent of third party's property.]—Bkpt. was entitled to reversionary interests in certain property subject to intges. then vested in his father, & before his bkpcy. he joined with his father in executing a settlement in which provision [illegible] that the son's [illegible] bill to be [illegible]ed & a [illegible] to be [illegible] into [illegible] of the [illegible] *Re* [illegible] [BARD] 3 D. [illegible] 5 C. B. R. CAN.

PART XX. SECT. 4, SUB-SECT. 1.—E.

80. *Money placed in bank to credit of bankrupt.]—*Held:* the bank could not apply the moneys to satisfy debtor's liability to the bank, it being a fraudulent preference.—*Re* LONGMORE, *Ex p.* ROYAL BANK & RIDER, [1923] 2 D. L. R. 673; 3 C. B. R. 818.

1. *Money [illegible] of chattels—bills of sale.]—The ct. [illegible] an order for payment to the official assignee of the value of the chattels seized & sold by the money-lender.—TURNBULL'S ESTATE (OFFICIAL ASSIGNEE OF) *v.* GOLDSTEIN (1921), C. L. R. 377; 21 S. R. N. S. W. 69 38 N. S. W. W. N. 170.—AUS.

80. *Money paid in [illegible] bankrupt no right of* *Held:* the assignment did [illegible] moneys so paid in the [illegible] 68 D. L. R. 757; [illegible] 2 W. W. R. 280.—CAN.

80. *Money supplied to provide bail for bankrupt.]—*Held:* the money [illegible] the property of [illegible] 68 D. L. R. 222; 2 C. B. R. CAN.

1. *Money illegally paid to former trustee.]—The ct. ordered t[illegible] [illegible]28.—

PART XX. SECT. 4, SUB-SECT. D.

A., by [illegible]ill, [illegible] by the will to be [illegible] but he was given [illegible] of it.—*Held:* A. [illegible] not [illegible] the quality of his [illegible] in

determine in the event of his bkpcy. :—*Held :* bkpt. was to be treated as settlor of the equity of redemption & therefore the provision for forfeiture on bkpcy. was void to that extent, but as to the father's mtges. bkpt. was not the settlor, & therefore the provision for forfeiture was valid to that extent.—*Re* WOMBWELL (1921), 125 L. T. 437 ; 37 T. L. R. 625 ; *sub nom. Re* WOMBWELL, *Ex p.* TRUSTEE, [1921] B. & C. R. 17.

5865. *Add. Annotation :*—**Consd.** *Re* Wombwell (1921), 37 T. L. R. 625.

5872. *Add. Annotation :* **Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007

5884. *Add. Annotation :* **Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5885. *Annotation :* – **Refd.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

5890. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5898. *Add. Annotation :*- **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5899. *Add. Annotation :* **Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007

5908. *Add. Annotation :* **Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5909a. "Shall do some act" whereby income would be assigned—Authority to pay income to trustee of composition scheme No notification of authority to trustee.]—B. was entitled to the income of one-third share of the residuary estate of testatrix unless & until he should be or become bkpt. or should do or suffer some act or thing whereby such share of income should be wholly or partially assigned, charged or incumbered or until he should die, whichever event should first happen, & from & after his death or bkpcy. or the doing or suffering such act as aforesaid such share & the income thereof should be held upon trust for his issue. Shortly after the death of testatrix B. entered into a scheme for composition with his creditors, & he then signed an authority to the trustees of testatrix's will "until further notice" to pay to the trustee under the scheme "the income now due or to accrue due" to B. from her estate. It appeared that there had been no communication by B. to the trustee of the scheme for composition concerning the authority given to the trustees of the will until after these proceedings had been taken in the matter: *Held :* in these circumstances the authority given to the trustees of the will did not operate as a good equitable assignment of B.'s interest in testatrix's estate & did not work a forfeiture thereof, inasmuch as in the absence of communication concerning the authority, the same remained simply a bare authority which was revocable.

Re HAMILTON, FITZGEORGE *v.* FITZGEORGE. (1921), 124 L. T. 737, C. A.

5920. *Add. Annotation :* **Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5922. *Add. Annotation :* **Distd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5922a. "By any or document anticipate, charge, or otherwise dispose of"—Debtor presenting bankruptcy petition.]—*Held :* the forfeiture clause had not taken *Re* GRIFFITHS, JONES *v.* JENKINS, Ch. 1007 ; 95 L. J. Ch. 429 ; 70 Sol. Jo. 1926] B. & C. R. 56.

5931. *Add. Annotation :*—**Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5932. *Add. Annotation :*—**Apld.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5932a. "Until he shall forfeit same in case of bankruptcy"—Existing bankruptcy known to testator.]—*Re* EVANS, PUBLIC TRUSTEE *v.* EVANS, No. 5936a, *post.*

5936. *Add. Annotation :*—**Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5936a. "Unless he attempts to become bankrupt"... Whether applicable to bankruptcy in invitum or generally.]—Testator, by his will dated Dec. 21, 1911, devised & bequeathed his real & personal estate to his trustees upon trust to sell & convert with power to postpone, & proceeded : "Out of my estate I desire my trustees to pay to my son H. an annuity of £156 to be paid monthly, unless he attempts to assign it or to become bkpt. In these events it shall be entirely optional with my trustees to pay him the annuity, my wish & intention being that the money is to be for his personal use to keep him from want. If they think his conduct or circumstances deserves or requires it, I authorise them to increase the annuity to £260 per annum, payable as & on the condition stated." Testator then directed that the residue of the income of his estate should be paid to his wife during her life or widowhood, & that after her death or remarriage it should be applied for the maintenance of his daughter until she attained the age of twenty-five years, & that upon her attaining that age the whole of the residue of his property should be given to her. By a codicil to his will, dated Sept. 10, 1918, testator devised two freehold farms to his son H. for the term of his life or "until he shall do some act to effectuate a sale or mtge. thereof or which shall forfeit the same in the case of bkpcy.," in either of which events the farms were to fall back into & form part of his residuary estate. Testator died on Sept. 13, 1918, leaving his widow, his daughter, & his son H. surviving. On Nov. 3, 1911, a receiving order had been made against H. on a creditor's petition, the act of bkpcy. being the failure to comply with a bkpcy. notice, & on Nov. 21, 1911, he was adjudged bkpt. Testator made his will & codicil with knowledge of these facts. On Jan. 22, 1919, H. obtained his discharge, but his creditors had not been paid in full, & the bkpcy. had not been annulled. On a summons taken out by the trustees for the determination of the questions whether the legacy given to H. by the will had become forfeited by his bkpcy., & whether the freeholds devised to him by the codicil belonged to him or formed part of the residuary estate : —*Held :* (1) the words "unless he attempts to become bkpt." in the will must be read in their strict grammatical sense & as so read did not apply to a bkpcy. *in invitum* or bkpcy. generally, & therefore no forfeiture of the annuity had occurred on which the discretionary trust arose, & consequently the annuity was payable to the trustee in H.'s bkpcy. ; (2) the words of devise in the codicil though phrased in words of futurity applied under the doctrine of *Trappes v. Meredith*, No. 5932, *r*, to the past bkpcy. of H., &

no principle upon which the ct. would be justified in holding that the doctrine was not applicable to legal estates, & consequently the devised freeholds had ever since the death of testator formed part of his residuary estate.—*Re* EVANS, PUBLIC TRUSTEE *v.* EVANS, [1920] 2 Ch. 304; 89 L. J. Ch. 525; 123 L. T. 735; 36 T. L. R. 674, C. A.

5946. *Add. Annotation :—Generally*, **Mentd.** *Re* Conyngham, Conyngham *v.* Conyngham, [1920] 2 Ch. 495.

5953. *Add. Annotation :—* **Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 191.

5958. *Add. Annotation :* **Consd.** Anglo-Baltic & Mediterranean Bank *v.* Barber, [1921] 2 K. B. 410.

5963. *Add. Annotation :* **Mentd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 191.

5965. *Add. Annotations :* **Mentd.** Maatschappij voor Fondsenbezit *v.* Shell Transport & Trading Co., [1923] 2 K. B. 166; Knight *v.* Ponsomby, [1925] 1 K. B. 515.

6052. *Add. Annotation :* **Refd.** *Re* Pennington & Owen, [1925] Ch. 825.

6074. *Add. Annotation :* **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

6092. *Add. Annotation :* **Mentd.** *Re* Rush, Ware *v.* Rush, [1923] 1 Ch. 56.

6111. *Add. Annotation :* **Consd.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6113. *Add. Annotation :* **Apld.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6115a. **Bankruptcy abroad.**]—Testator by his will declared himself to be residing in London, & domiciled in England. He subsequently resided in Algiers & carried on business as a coal merchant there until his death. On a petition presented by him in his lifetime to the ct. in Algiers he was declared bkpt. by the French ct. after his death, & a "syndic" was appointed there to whom creditors' claims might be sent. The effect of the order on the evidence was to vest in the French "syndic" the whole of bkpt.'s estate, including assets accruing after the commencement of the bkpcy. In a subsequent creditor's administration action in England, h., an English creditor, was appointed administrator & after a grant of administration with the will annexed, proceeded to advertise for creditors. The French "syndic" now claimed that the assets in this country should be transferred to him, admitting that if his application was successful the costs of administration here would have to be deducted :—*Held :* a bkpcy. order having been made by a French ct. of competent jurisdiction the "syndic" was entitled to the whole of the assets wheresoever situate, & these must be handed to him after deducting the costs, charges & expenses of the administration proceedings here.
Re BURKE, KING *v.* TERRY (1919), 54 L. Jo. 430; 148 L. T. Jo. 175.

Annotation : **Refd.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6115b.] In 1913 deft., a domiciled Englishman, entered into an hotel partnership with other persons in Belgium in connection with the Ghent Exhibition. Deft. became tenant of a house in Ghent for a period of eight months from Apr. 1913, & employed clerks & other persons. The partnership incurred heavy liabilities, & by a decree of the Commercial Ct. at Ghent, dated Aug. 9, 1913, the partnership & its members were declared to be insolvent pursuant to an article of the Belgian Civil Code. The decree was pronounced by the ct. without notice to deft., but subsequently, in accordance with the recognised procedure, he was notified of the decree & appeared by solr. to show cause why it should be dissolved. It was, however, affirmed by the Ct. of Appeal. Pltf., trustee in the bkpcy., brought an action in England alleging that deft. was possessed of assets within the jurisdiction of the English cts. & claiming a declaration that all deft.'s assets had become vested in pltf. as trustee :—*Held :* (1) the decree of the Belgian ct. was valid inasmuch as deft. had submitted to the jurisdiction, (2) the proceedings were not contrary to natural justice, inasmuch as deft. had been afforded an opportunity of being heard; (3) subject to the decision of other issues not before the ct., there should be a declaration that pltf. was entitled to all the movable assets of deft., wheresoever situate, & to the appointment of a receiver.
BERGEREM *v.* MARSH (1921), 91 L. J. K. B. 80; 125 L. T. 630; [1921] B. & C. R.

6121. *Add.* ... **Mentd.** Pett ... Right Soc. ... Theatre of Va ... [1921] A. C.

PART XX. SECT. 4, SUB-SECT. 2. E.

5961 ii. — *Premium* ... ere payments due to a co. ... policy were not by the policy itself expressed to be payable during the lifetime of the assured or for seven years at least :— *Held :* the policy was not within the protection afforded by Life Insurance Act, 1908, s. 65, & the policy-moneys passed to the official assignee of the deceased policy-holder.— LONDON & LANCASHIRE ...

N. Z. L. R. 1286.—**N.Z.**

sq. *Rights under contract — Cancellation before receiving order.*]—*Held :* the trustee in bkpcy. had no rights under the contract in the name of bkpt., it having been rightly cancelled.—*Re* DOLLAR TAXI Co., *Ex p.* TRUSTEE, [1924] 3 D. L. R. 97; 4 C. B. R. 667.—**CAN.**

st. ***Proceeds of company's assets*** ... *Held* the ... transaction was not fraudulent. *Re* UNITED EXHIBITIONS, [1922] 3 D. L. R. 116; 3 C. B. R. 779.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 3. B

sv. *Proceeds of sale [of] ... given by husband to wife* ... p ... d ... derived from ... effected with ... pol., were moneys ... the wife for the ... business of the ... such, apart ... *Re* Hess, 1926 ...

N. Z. L. R. 55. **N.Z.**

sw. *Chattels* ... of ... was ... her ... to prove ... 4 ... R. ... C. B. R. 542.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 6. B.

sa. *Insolvency in South Africa. Property in Ireland.* By an order of the Supreme Ct. of the Union of South Africa the estate of ... insolvent w... vested ... assignee of h... at ... to ... of ... to the ... of ... solvent ... h right ... has ...

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6126. *Add. Annotation :*—**Apld.** *Re* Collins, [1925] Ch. 556.

6128. *Add. Annotations :* — **Mentd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 560.

6129. *Add. Annotation :-* **Apld.** *Re* Collins, [1925] Ch. 556.

6129a. ——.]—*Re* COLLINS, No. 6050a, *post.*

6135. *Add. Annotation :* — **Apld.** *Re* Caines Mortgage Trusts, [1918-19] B. & C. R. 297.

6136. *Add. Annotation :* - **Mentd.** *Re* Caines Mortgage Trusts, [1918-19] B. & C. R. 297.

6146. *Add. Annotation :*—**Mentd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321.

6150a. — **Transfer of shares bought for client.**] -A. instructed his broker to purchase on his behalf two hundred shares in a co. The broker instructed a firm of brokers to effect the purchase. The firm duly purchased the shares & sent a transfer of the shares to the broker, prepared in the name of A. The broker had in the meantime filed his petition in bkpcy. & the transfer passed to the official receiver & from him to the trustee in bkpcy. of the broker. It was claimed by the firm & also by A. :—*Held :* it was " property held by bkpt. on trust " within the exception contained in 1914 Act, s. 38, & it must be handed over to A.—BARBER & SONS *v.* RIGLEY (1922), 38 T. L. R. 650; 66 Sol. Jo. 577.

6249. *Add. Annotation :*—**Mentd.** The Kronprinsessan Margareta, The Parana, etc., [1921] 1 A. C. 486.

6263. *Add. Annotation :*—**Mentd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321.

6270. *Add. Annotation :*—**Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321.

6272. *Add. Annotations :*—*As to* (1) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321. *As to* (2) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321.

PART XX. SECT. 4, SUB-SECT. 7.

6121 i. *Payments to accrue under ctd :* moneys already earned by the assignor, although not already due & payable to him, could be assigned by him. & their assignment was not invalidated by bkpcy. intervening before such moneys became due & payable, & this principle was applicable to retention money kept back in respect of progress payments under a contract. OFFICIAL ASSIGNEE *re*, [1921] N. Z. L. R. 460. - **N.Z.**

6128 i. *Book debts - Assignment to incorporated bank.*] *Held :* the assignment of all book debts then due or accruing due or thereafter to become due was a general assignment of book debts within Bkpcy. Act, s. 30, but was valid. SUPERA TOBACCO CO. *v.* ROYAL BANK OF CANADA (1923), 63 D. L. R. 58; 2 C. B. R. 309; 52 O. L. R. 131.—**CAN.**

6128 ii. - — *Assignment not registered - No provincial legislation providing for registration.*] *Held :* ment void as against trustee in bkpcy. —ROYAL BANK OF CANADA *v.* EASTERN TRUST CO., [1923] 1 D. L. R. 498; [1923] S. C. R. 177. -**CAN.**

BANK, [1923] 4 D. L. R. 279; 3 C. B. R. 816.—**CAN.**

6128 iv. — .] To be valid against a trustee in bkpcy. any assignment of future book debts must be rigidly according to Bkpcy. Act, s. 30.—*Re* WALTON, [1924] 4 D. L. R. 706; 5 C. B. R. 112. **CAN.**

PART XX. SECT. 5, SUB-SECT. 1

6133 iv. — — .] - *Re* STANDARD IMPORTS, LTD., *Ex p.* CANADIAN EXPRESS CO. (1922), 68 D. L. R. 396; 2 C. B. R. 208. -**CAN.**

PART XX. SECT. 5, SUB-SECT. 2.—A.

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-CAN.

6139 v. — —

preferred creditor if the trust money could be traced to a particular fund.—*Re* DOMINION TICKET, ETC. CORPN., *Ex p.* AKER, [1924] 2 D. L. R. 807.—**CAN.**

6150 i. *Broker—Securities sold for client—Proceeds paid into broker's general account.*]—*Held :* as the money could not be distinguished in any way from other moneys in the general account of the brokers the client could not claim it & could only sue for breach of contract.—DALPHE *v.* FAIRBANKS, ROSSELIN & CO. (1922), 66 D. L. R. 335; 2 C. B. R. 524.—**CAN.**

ab. *Sole beneficiary—Widow's claim to share of estate.*]—Where a widow claims under Widows Relief Act, R. S. A., 1922 (c. 145), s. 10, to the unadministered portion of her husband's estate, such portion does not vest in the trustee in bkpcy. of the sole beneficiary under the husband's will. *Re* MCINTYRE, [1925] 4 D. L. R. 127; [1925] 3 W. W. R. 172.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 2.—B.

i. *Specific purpose —Stock certificate ited with agent —For sale.*]—Bkpt. sold a portion of the shares & had the remainder fraudulently transferred into his own name :—*Held :* the trustee must return the shares.—DENMAN *v.* TOUSAW, HART & ANDERSON & BELL TELEPHONE CO. (1922), 66 D. L. R 572.—**CAN.**

ad. — — — — — — — — .]—*Held :* it was necessary for petitioner accurately to identify the certificate which he claimed from the insolvent.—MCKAY *v.* TURGEON (1922), 67 D. L. R. 607. -**CAN.**

PART XX. SECT. 5, SUB-SECT. 4.—A.

6261 i. *General rule—Fund undistinguishable.*]—In order to give rise to a right to follow moneys as trust mixed with the trustee's moneys there must have trust fund capable of identified & follo GRANT, LTD., *Ex p.* CANADIAN E Co., [1923] 1 D. L. R. 505; 32 Man. L. R. 375; [1922] 3 W. W. R. 1161.—**CAN.**

6261 ii. *S.P.* OGILVIE FLOUR MILLS CO., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1925] 4 D. L. R. [925] 3 W. W. R. 556.—**CAN.**

6267 i. *Agent to sell goods—Right to*

agent from sales of his property is, after deduction of the agent's commission money held by him in a capacity, & if it is mixed by the agent with his own money in his general banking account & he become bkpt., the money can be followed by the *cestuis que trust* if it is still traceable; otherwise they have no recourse other than proving their claims in the bkpcy.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1923] 3 W. W. R. 257.—**CAN.**

PART XX. SECT. 6.

6283 i. *" Working tools " — Law agent's library.*] - *Held :* law reports, statutes, & legal text-books, forming the professional library of a practising law-agent, were not necessary " working tools."—PENELL *v.* ELGIN, [1926] S. C. 9.—**SCOT.**

h i. —— ——.]—*Re* TRENWITH, [1922] 3 W. W. R. 1205.—**CAN.**

h ii. —— *Effect of mortgage.*]—Where the owner of an urban homestead mortgages it, the exemption rights of the owner are confined to the equity of redemption.—*Re* BELL, [1922] 1 W. W. R. 1015; 67 D. L. R. 66; 32 Man. L. R. 9 at p. 13.—**CAN.**

h iii. —— " *Building occupied "— By debtor.*]—Debtor was the registered owner of a lot on which was a two-storey building, in the upper storey of which he & his wife had dwelt continuously since his purchase of the lot. The lower storey was used mainly as a store, in which debtor's wife carried on a business, but in the rear part was stored some coal, wood old furniture. The store & had an outside entrance as well as an inside one. A lean-to had been erected by debtor, which had an outside entrance only :—*Held :* the property was within Exemptions Act, s. 2. cl. 10. & was under Bkpcy. Act, s. 10, excepted from an assignment under that Act.—*Re* SKEELE, [1923] 1 D. L. R. 389; [1923] 1 W. W. R. 117; 3 C. B. R.

h iv. —— -
nership property.]—Under Bkpcy. Act a lot & building belonging to a partnership passes to the authorised assignee under an assignment by the partnership, although part of the building is as a home by one of the —*Re* DOBROVITCH, DOBROVITCH *v.* CANADIAN CREDIT MEN'S , LTD., [1925] 1 D. L. R. 3 W. W. R. 631.—**CAN.**

PART XX. SECT. 7, SUB-SECT. A. (a).

iii. ——.]—The after-ac of a debtor is available ——— under a receiving order but

6295a. Life interest falling into possession—During third bankruptcy—Right of trustee under previous bankruptcies.]—*Re* SILBER'S SETTLEMENT, PUBLIC TRUSTEE *v.* SILBER, [1920] W. N. 77.

6298. *Citations :*—For "CHIPPENDALE *v.* TOMLINSON (1752), 1 Cooke's Bankrupt Laws, 7th ed., p. 406" read "CHIPPENDALL *v.* TOMLINSON (1785), 4 Doug. K. B. 318; 1 Cooke's Bankrupt Laws, 8th ed., p. 428; 99 E. R. 900."

Add. Annotations :—**Distd.** Beckham *v.* Drake (1849), 2 H. L. Cas. 579. **Consd.** *Re* Roberts, [1900] 1 Q. B. 122. **Refd.** *Re* Elswood (1855), 26 L. T. O. S. 96; Wadling *v.* Oliphant (1875), 1 Q. B. D. 145.

6308. *Add. Annotation :*—**Mentd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

6313. *Add. Annotation :*—**Mentd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

6317. *Add. Annotation :*—**Mentd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

6324. *Add. Annotation :*—**Refd.** Dyster *v.* Randall, [1926] Ch. 932.

6334. *Citations :*—For "[1918] 2 Ch. 389" read "[1918] 2 Ch. 339."

6347. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

6348. *Add. Annotation :*—**Refd.** Dyster *v.* Randall, [1926] Ch. 932.

6349. *Add. Annotation :*—**Mentd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

6352. *Add. Annotation :*—**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

6366. *Add. Annotations :*—**Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Refd.** *Re* Cohen, *Ex p.* Official Receiver, [1919] 2 K. B. 271; *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

6395. *Add. Annotation :* **Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

6398. *Add. Annotation :*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

6399. *Add. Annotation :*—**Mentd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200.

6409. *Add. Annotation :*—**Mentd.** Parr *v.*

6410. *Add. Annotation :* **Mentd.** Parr *v.* A.-G., [1926] A. C. 239.

6449. *Add. Citation :*—*sub nom. Re* PLIMMER, *Ex p.* SPELLER, 14 C. B. 159, n.

Add. Annotation :—**Refd.** Graham *v.* Furber (1853), 2 C. L. R. 10.

6464. *Add. Annotation :*—**Mentd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6477. *Add. Annotations :*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, 2 Ch. 89.

6483. —**Refd.** *v.* [1924] 1 K. B. 857.

6514. *Add. Annotation :*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6515. *Add. Annotations :*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6516a. On business premises.]—The custom of hiring furniture which exists in the case of hotel proprietors, & is so notorious as to exclude the doctrine of reputed ownership in the event of the bkpcy. of the hotel proprietor whether the particular furniture was hired or not, does not extend to furniture in the possession of traders generally, *e.g.* a wholesale grocer.—*Re* TABOR, *Ex p.* CORK, [1920] 1 K. B. 808; *sub nom. Re* TABOR, *Ex p.* TRUSTEE, 89 L. J. K. B. 352; 122 L. T. 709; 36 T. L. R. 191; [1919] B. & C. R. 299.

Annotations :—**Folld.** *Re* Kaufman Segal & Domb, *Ex p.* Trustee, [1923] 2 Ch. 89. **Refd.** French *v.* Gething, [1922] 1 K. B. 236.

6519. *Add. Annotations :*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Folld.** *Re* Kaufman

2 Ch. 89.

6523. *Add. Annotation :* **Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth ding & Dry Docks Co., [1926] Ch.

6524. *Add. Annotation :* **Mentd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 491.

6525. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6561. *Add. Annotation :*—**Refd.** French *v.* Gething, [1922] 1 K. B. 236.

6584. *Add. Annotation :* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6613. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6614. *Add. Annotation :*—**Mentd.** *Re* Allester, [1922] 2 Ch. 211.

6625. *Add. Annotation :* **Refd.** *Re* Wetherell, *Ex p.* Salaman, [1926] Ch. 167.

6647. *Add. Citations :*—*sub nom. Re* PLIMMER, *Ex p.* SPELLER, 14 C. B. 150, n.

Add. Annotation :—**Refd.** Graham *v.* Furber (1853), 2 C. L. R. 10.

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not under an authorised assignm
Re LIPSON, [1923] 3 D. L. R. ...,
52 O. L. R. 352; 2 C. B. R. 458.—**CAN.**

6293 v. — — ——.]—An insolvent
power to dispose of any property
may acquire after being declared
, & all persons dealing with
him & for a consideration

assignee, provided the transactions took place before the official assignee intervened & claimed the property on behalf of insolvent's estate.—CHHOTE LAL *v.* KEDAR NATH (1924), I. L. R. 46 All. 565.—**IND.**

PART XX. SECT. 7, SUB-SECT. 1.—B. (a).

dion to bankruptcy by

by p. ... & ... D. L. R. 1159.—**CAN.**

PART XX. SECT. 9, SUB-SECT. 1.

6416 l. "*Goods,*" "*goods & chattels*"—*Goods of third party—Intermingled with bankrupt's property by* ... property became assets to satisfy the creditors.—*Re* PROGRESSIVE FARMERS. *Re* HOLDEN NATIONAL CO.'S CLAIM (1921), 62 D. L. R. 631; 2 C. B. R. 551.—**CAN.**

PART XX. SECT. 9, SUB-SECT. 3.—B. (b) i.

6621 ll. —— *Second mortgage of.*)—In 1905, C. the owner of a life policy of assurance, mortgaged it to the

In Apr. 1907, C. mortgaged the ... & the lands to B., who gave no ... to the co. till Nov. 1920. In ..., 1907, C. was adjudi

In ... and ... due on their mtge. ... the ... ty to the ... to ...

... & B. for pay ment of the amount due to him on his mtge.:—*Held:* the equity of redemption in the mtge. was "goods & chattels" within Irish Bkpt. & Insolvent Act, 1857 (c. 60), s. 313, & was at the date of the bkpcy. "in the possession, order, or disposition of bkpt." by the consent & permission of the owner.—*Re* CLANCARTY, [1921] 2 I. R. IR.

a stockbroker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500, & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. On Feb. 27, 1924, bkpt. committed an act of bkpcy. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both & without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. &, as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled. At that time neither J. nor W. nor S. had notice of any available act of bkpcy. On Sept. 18, 1924, a receiving order was made, at which date S. had paid & W. had received from J. sums amounting to £90 in respect of the later debt. Upon receiving notice of the receiving order, J. gave notice to S. of the assignment. On Sept. 25, 1924, an order of adjudication was made, & on Oct. 7, 1924, appt. was appointed trustee. In Apr. 1925, W. died, & his exor. was made resp. to the motion by which a declaration was sought that the two debts were at the commencement of the bkpcy. in the order & disposition of bkpt. & property of bkpt. divisible amongst his creditors: *Held*: (1) the earlier debt, which, admittedly, arose in the course of bkpt.'s business, was, notwithstanding its conversion into a judgment debt, none the less at the commencement of the bkpcy. a debt due in the course of his business & in the order & disposition of bkpt. & divisible amongst his creditors; (2) the agreement between bkpt. & S. & the deposit of the notes by bkpt. with W. having been effected after the commencement of the bkpcy., in the absence of knowledge on the part of either S. or W. of an available act of bkpcy., & the ct. inferring an agreement by W. with bkpt., in consideration of the deposit of the notes, not to enforce payment of the advance so long as S. paid the amounts as & when they fell due, constituted valid transactions for valuable consideration within 1914 Act, s. 45, &, apart from such inference, the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes; (3) even if the trustee was entitled to recover the instalments paid after the date of the receiving order, the amount paid before that date was a payment protected by sect. 45 (b); & the judgment debt formed part of the property of bkpt. divisible amongst his creditors, while the claim in respect of the other debt should be dismissed.—*Re* WETHERED, *Ex p.* SALAMAN, [1926] Ch. 167; 70 Sol. Jo. 324; *sub nom. Re* WETHERED, *Ex p.* SALAMAN'S TRUSTEE, TRUSTEE *v.* BANCE, 95 L. J. Ch. 127; 134 L. T. 264; [1925] B. & C. R. 265.

6859. *Add. Annotations:* **N.F.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 80.

6863. *Citations:*—For "5 Ch. App. 520" read "8 Ch. App. 520."

Add. Annotation:—**Mentd.** French *v.* Gething, [1922] 1 K. B. 236.

6867. *Add. Annotation:*—**Reld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6868. *Add. Annotation:*—**Folld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6869. *Add. Annotation:* **Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6873. *Add. Annotations:* **Reld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 80.

6879. *Add. Annotation:* **Reld.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6879a. Clothiers—Custom to hire machines.]—*Re* KAUFMAN SEGAL & DOMB, *Ex p.* TRUSTEE, No. 6802a, *ante*.

6881. *Add. Annotations:* **Apld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Folld.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 80.

6881a. — — — — — — —.]—*Re* TABOR, *Ex p.* CORK, No. 6516a, *ante*.

6885. *Add. Annotation:* **Reld.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6888. *Add. Annotation:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6889. *Add. Annotations:* **Apld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Reld.** French *v.* Gething, [1922] 1 K. B. 236.

6890. *Add. Annotation:*—**Reld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6890a. — — — —.]—*Re* TABOR, *Ex p.* CORK, No. 6516a, *ante*.

6892. *Add. Annotation:* **Mentd.** *Re* Morris, Mayhew *v.* Halton, [1921] 1 Ch. 172.

6898. *Add. Annotation:*—**Reld.** French *v.* Gething, [1922] 1 K. B. 236.

6911. *Add. Annotation:*—**Reld.** *Re* Chiandetti, *Ex p.* Trustee (1921), 91 L. J. K. B. 70.

PART XX. SECT. 9, SUB-SECT. 8.—A.

6859 i. *Duty of court—To take notice of alleged custom.*]—Where it is proved that no less than 57 funeral cars & hearses were supplied in Ireland under hire-purchase agreement by one firm between Nov. 23, 1912, & Mar. 8, 1923, the ct. will draw the conclusion that the custom of hiring funeral hearses on the hire-purchase system is sufficiently notorious. The test in such cases is what is the state of knowledge of persons who have made themselves acquainted with the nature & custom of the particular situation. *Re* TOOKENS, [1924] 2 I. R. 1, 4; 58 I. L. T. 30.—**IR.**

PART XX. SECT. 9, SUB-SECT. 8.—B.

so. *Undertaker—Custom to hire hearses & funeral carriages.*] *Re* TOOKENS, No. 6859 i., *ante*.—**IR.**

PART XX. SECT. 10, SUB-SECT. 3.—B

b (p. 8199). Add "*affd. sub nom.* MARTIN *v.* FOWLER, 46 S. C. R. 119."

ll. — — — — —.]—Payment of proceeds of sale:—*Held*, a preferential payment & void.—ZYLMAN & LAMARRE *v.* AMERICAN FURNITURE CO. & LAVERY (1922), 66 D. L. R. 99, 24 C. R. F. 547.—**CAN.**

6912. *Add. Annotation :*—**Refd.** *Re* Chiandetti, *Ex p.* Trustee (1921), 91 L. J. K. B. 70.

6912a. —— **Goods sold in interpleader action—Proceeds in court.**]—*Re* CHIANDETTI. *Ex p.* TRUSTEE, No. 7113a, *post*.

6915. *Add. Annotations :*— **Consd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70. **Mentd.** *Re* Fairley, [1922] 2 Ch. 791.

6916. *Add. Annotation* . **Mentd.** *Re* Fairley, [1922] 2 Ch. 791.

6916a. —— —— ——.] *Re* CHIANDETTI, *Ex p.* TRUSTEE, No. 7113a, *post*.

6918. *Add. Annotation :*—**Consd.** *Re* Fairley, [1922] 2 Ch. 791.

6918a. —— —— —— **Subsequent withdrawal & return of nulla bona.**]— On Jan. 14, 1921, the sheriff, in executing a writ of *fi. fa.* for £141, levied on debtor's goods, but on Jan. 29 being paid £72, on account of the debt in addition to costs, fees, & possession money, he withdrew by arrangement reserving a right of re-entry for £72 balance. He retained the £72 received on account for fourteen days & then paid it to the execution creditors. On Mar. 16 the sheriff made a second levy, but on being paid £53 on account of the debt in addition to fees & possession money, he again withdrew reserving a right of re-entry for the £19 balance. After retaining the £53 for fourteen days he paid it to the execution creditors. On Apr. 26 the sheriff made a third levy, but the goods seized being found on interpleader to belong to a third party, he finally withdrew & made a return of *nulla bona* on May 2. On Sept. 8 a petition in bkpcy. based on an act of bkpcy. of Aug. 19 was presented. A receiving order was made on Sept. 29 followed by an adjudication on Oct. 1 & an order for summary administration on Oct. 3: *Held:* the execution was completed within 1914 Act, ss. 40, 41, by the return of *nulla bona* on May 2, & the trustee had no title to the £72 & £53 realised by that completed execution.

Qu.: whether the trustee would in any case have been entitled to the moneys paid before June 8, the earliest possible date to which his title could relate back under sect. 37.—*Re* FAIRLEY, [1922] 2 Ch. 791; *sub nom. Re* FAIRLEY. *Ex p.* OFFICIAL RECEIVER, 92 L. J. Ch. 140; [1922] B. & C. R. 127;

a. Re FAIRLEY, *Ex p.* Low
38 T. L. R. 8

6919. —— **Consd.** ——y, [1922] 2 Ch. 791.

6920. —— *As to* (1) **Consd.** *Re* Fairley, [1922] 2 Ch. 791. **Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

6921. *Add. Annotation :*—**Consd.** *Re* Fairley, 2 Ch. 791.

6954. *Add. Annotation :*—**Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

6955. *Add. Annotation :*—**Refd.** *Re* Fairley, [1922] 2 Ch. 791.

6961. *Add. Annotations :*—**Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Mentd.** *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87.

6962. *Add. Annotations :*—**Mentd.** *Re* Gunsbourg, [1920] 2 K. B. 426; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87.

6964. *Add. Annotation :*—**N.F.** Latter *v.* Juckes (1926), 42 T. L. R. 723.

6965. *Add. Annotation :*—**Consd.** *Re* Sarjeant, [1923] 2 Ch. 302.

6965a. **"Any other petition"—Notice not given within fourteen days.**]—A sheriff, on behalf of an execution creditor, levied an execution against debtor for more than £20, & received the money from debtor to avoid a sale. Within fourteen days of the payment the sheriff received notice of a bkpcy. petition on which an order would have been made had not debtor in the meanwhile filed his own petition on which a receiving order was made as a matter of course. Notice of this second petition was given to the sheriff more than fourteen days after the payment, but while the money was still in his hands pending the result of the first petition. The trustee in bkpcy. & the execution creditor both claimed the money:- *Held:* the words in 1914 Act, s. 11 (2), "or on any other petition of which the sheriff has notice," were not to be
by the addition of the words
within the said fourteen days" so as to permit the ..eriff to pay the proceeds of the execution to the execution creditor because notice of the second petition on which the receiving order was made was not given within fourteen days of the receipt of such proceeds. The sheriff must hold, in the first instance, to see whether a receiving order would be made, & if he had notice of another petition, even after the lapse of fourteen
then he must hold to see whether an
would be made on that other petition,
or on any petition.- LATTER *v.* JUCKES (1926), 42 T. L. R. 723; 70 Sol. Jo. 905, C. A.

6966. *Add. Annotation :*—**Refd.** *Re* British Salicylates, [1918–19] B. & C. R. 160.

6979. *Add. Annotation :*—**Mentd.** The James W. Elwell, [1921] P. 351.

7006. *Add. Annotation :*—**Mentd.** The Joannis Vatis, [1922] P. 92.

7032. *Add. Annotations :*—**Refd.** *Re* Webb (Smith-

XX. SECT. 10, SUB-SECT. 4.- A.

6934 ii. —— *Bankruptcy Act*, s. 11 (3).]- Held a sheriff with whom a writ of execution has been placed receives a
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1 W. W. R. . . C.
CAN.

4 Ill. —
. R. S. A., c.
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the above Act.-
Re
. L. R. 514; [1923] 1 . W. R.
C. B. R. 465.—CAN.

PART XX. SECT. 10, SUB-SECT. 4.—C.
a sheriff is
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HAN. [1921] 2 W. W. R. 147;
L. R. 233; 59 D. L. R.
1 C. B. R. 493.—CAN.

MON, [1923] 1 W. W. R.
C. B. R. 806.—CAN.

field, London), [1922] 2 Ch. 369. **Mentd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508.

7051. *Add. Annotation :*—**Mentd.** The James W. Elwell, [1921] P. 351.

7058. *Add. Annotation :*—**Mentd.** The James W. Elwell, [1921] P. 351.

7079. *Add. Citation :—sub nom. Re* PLAMMER, *Ex p.* TRUSTEE, 69 L. J. Q. B. 936 ; 48 W. R. 634 ; 44 Sol. Jo. 572 ; 7 Mans. 367, C. A.

7087. *Add. Citation : — subsequent proceedings* (1805), 11 Ves. 377.

7098. *Add. Annotation :*—**Refd.** Jagger *v.* Jagger, [1926] P. 93.

7104. *Add. Annotations :—As to* (1) **Refd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94. *As to* (2) **Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7105. *Add. Annotation :*—**Refd.** *Re* (1921), 37 T. L. R. 625.

7108. *Add. Annotation :*—**Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7109. *Add. Annotation :*—**Consd.** Charters *Ex p.* Trustee, [1923] B. & C. R. 94.

7111. *Add. Annotation :*—**Mentd.** *Re* [1920] 2 K. B. 426.

7113. *Add. Annotation :*—**Mentd.** Denny (Trustee) *v.* Denny & Warr, [1919] 1 K. B. 583.

7113a. ——Gift by brother to sister.]—By a deed of gift dated Oct. 7, 1919, debtor, who was adjudged bkpt. on Nov. 23, 1920, "in consideration of his natural love & affection for the donee" purported to assign & convey to his sister, resp., "the business carried on by him at 58a, Old Compton Street, Soho, & the stock-in-trade, wine & produce in & about the premises." At the date of the deed petitioning creditors were proceeding to enforce judgment under R. S. C., Ord. 14, & on Mar. 18, 1920, obtained final judgment against debtor for £527 7*s.* 4*d.* for goods sold & costs. On Mar. 20, 1920, execution was levied. Upon such levy being made, resp. claimed under the deed of gift the whole of the furniture & stock seized by the sheriff. An interpleader summons was taken out by the sheriff, & upon the hearing thereof, on Mar. 26, 1920, the master ordered claimant to pay into ct. £600 or give security for such amount, & in default the sheriff was authorised to sell the property seized & pay the proceeds into ct. to abide the result of an issue directed to be tried between claimant & the execution creditors. Pursuant to the order the sheriff sold the goods on Apr. 28, 1920, & on May 20, 1920, paid the sum of £202 12*s.* 2*d.* into ct. On Nov. 3, 1920, the parties to the interpleader summons agreed to divide the money between them & to withdraw the record ; these terms were embodied in an order of the master of that date. In the meantime, however, a receiving order was made on Nov. 1, 1920, & petitioning creditors, the execution creditors, informed the official receiver of the sum of money being in ct. & of the terms of settlement so agreed as aforesaid. Thereupon the official receiver intervened, & on Nov. 1, 1920, gave notice in writing to the Paymaster-General of the Supreme Ct. of the receiving order, & this notice had the effect of preventing the order being acted upon. The trustee moved for a declaration that the deed of gift was void as against him : *Held :* (1) the deed of gift was a voluntary settlement &, being made within two years of the bkpcy., was void ; (2) the execution having been completed & the proceeds held by the sheriff for fourteen days, the trustee's title was barred, because, although the execution was not completed before the sheriff had been in possession for twenty-one days, the act of bkpcy. thereby created had not occurred within three months of the presentation of the petition & was not therefore available to establish the trustee's title. *Re* CHANDLETTE, *Ex p.* TRUSTEE (1921), 91 L. J. K. B. 70 ; 37 T. L. R. 1 ; [1921] B. & C. R. 82.

7118. *Add. Annotation :* **Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7119a. ——Donee taking over liability for mortgage debt.]—By an indenture dated July 19, 1920, a husband assigned his reversionary interest under a will to his wife, subject to a mtge. ; & the wife covenanted expressly to pay the mtge. debt & interest & to indemnify the husband against his liability under the mtge. The husband was adjudged bkpt. on June 20, 1922, within two years of the assignment. On motion by the trustee in the bkpcy. for a declaration that the assignment was void against him as being a voluntary

PART XX. SECT. 10, SUB-SECT. 8.

y (p. 830) l. ——— *Memorandum that title subject to costs of prior execution.*]—On an assignment under Bkpcy. Act, where there are executions ignor, the of land titles, in making of title to the assignee, make a memorandum that the title is subject to a lien for costs of the first execution which was lodged with the sheriff & to a lien for costs of & sheriff's fees of all executions.—*Re* LAND TITLES GENERAL TRUST 1923] 3 W. W. R. —CAN.

order.]—A debt attached by a garnishee order under judgment which was still subsisting : not rank in r. URAIN & PRO- Co., [1924] 1 D. L. R. 332 ; R. 35 K. B. 161.—CAN.

PART XX. SECT. 11, SUB-SECT. 1.

7086 ii a.] *Held :* A not being hedged about with conditions was not a Bkpcy. Act,] RE r. BRAITHWAITE, [N. Z. L. 1186. N.Z.

j l. ———,] under a policy of life it to be for the benefit of his wife, trust created is not invalidated by subsequent insolvency, & creditc insured have no rights which interfere with the rights of his the of OF BRITISH NORTH AMERICA r. E (1919), 46 N. B. R. 105.— CAN.

of to wife in the nature of a made for of *Held :* though it would not be set yet of property r.] D. L. R. 746.—CAN.

r l.] ment of in W n for s of furniture owned by the husband should be paid to a mortgagee. MCCARTHY r. NEVE (1923), 51 N. B. R. 123.—CAN.

sg. *Declaration of trust in favour of wife. In pursuance of alleged ante-*

Bkpcy. Act, s. 29 (1), & - *Re* ATHERTON & CLARKE, . R. 318 ; 56 N. S. R. 43 ; 3 C. B. R. 6 —CAN.

PART XX. SECT. 11, SUB-SECT. 2.

h l. — *Purchased by husband for* To rely of to ife] 4] . R. CAN.

settlement under 1914 Act, s. 42:—*Held*: there was ample consideration in the assignment, & the wife was a "purchaser" for valuable consideration within the sect.—*Re* CHARTERS, *Ex p.* TRUSTEE, [1923] B. & C. R. 91.

7122. *Add. Citation*:—*sub nom. Re* MACDONALD, *Ex p.* MCCULLUM, [1920] 1 K. B. 205; 122 L. T. 316.

7124. *Add. Annotation*:—**Refd.** *Re* (, [1920] 2 K. B. 426.

7125. *Add. Annotations*:—**Consd.** *Re* (, [1920] 2 K. B. 126. **Mentd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

7127. *Add. Annotation*:—**Refd.** *Re* (, [1920] 2 K. B. 126.

7129. *Add. Annotation*:—**Refd.** *Re* (, [1920] 2 K. B. 126.

7133. *Add. Annotation*:—**Refd.** *Re* (, [1920] 2 K. B. 126.

7134. *Add. Annotations*:—**Consd.** *Re* (, [1920] 2 K. B. 126. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

7136. *Add. Annotation*:—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 126.

7138. *Add. Annotation*:—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 126.

7140. *Add. Annotation*:—**Mentd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

7147. *Add. Annotation*:—**Mentd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

7153a. —— *Re* DENT, *Ex p.* TRUSTEE, No. 2902a,

7161a. Covenant to settle all property to which settlor might become entitled—Settlement of reversionary interest.]—*Re* DENT, *Ex p.* TRUSTEE, No. 2902a, *ante*.

7164. *Add. Annotations*:—**Apprvd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. D. 515. **Mentd.** *Re* Prior, *Ex p.* Trustee, [1922] B. & C. R. 1.

7165. *Add. Annotations*:—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515. **Mentd.** *Re* Prior, *Ex p.* Trustee, [1922] B. & C. R. 1.

7166a. —— ——.]—To constitute a fraudulent preference three conditions must be fulfilled; (1) that the payment is made by a person unable to pay his debts as they become due from his own money; (2) that it in fact prefers one creditor over others; (3) that the dominant motive with which the payment was made was a desire to prefer that creditor to whom the payment was made. If a voluntary payment in fact gives a creditor a preference & the reason for such payment is unexplained, then a presumption of preference arises. The existence of an explanation ousts the presumption of preference.—*Re* DRAGE (J.) & SONS, PALMER & ROBERTS *v.* KNIGHT (1926), 134 L. T. 765.

7171. *Add. Annotation*:—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7172. *Add. Annotation*:—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

PART XX. SECT. 12, SUB-SECT. 1.

7164 x. .] A preference & a fraudulent preference are vitally different. Bkpcy. Act prohibits a fraudulent preference only; & to constitute a fraudulent preference there must be present two circumstances, a preference in fact & an intention on the

ROYAL BANK OF CANADA, BURNS *v.* GRAHAM (1922), 69 D. L. R. 608; 51 O. L. R. 561, [1922] 2 W. W. R. 211. **CAN.**

7164 xi. . .] Where the delivery of goods was not a disposition in the ordinary so of ness & th as to p *Held*: at

S. AF.

xvi. Whe

property to evances

Held, the mb v. Peters (19 7 N. B. R. 1 **CAN.**

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m bkpcy. STEVENS-*Re* CANADIAN CAR 70 D. L. R. 853.

CAN.

7167 xviii. . . .] Where certransactions

rebut le as ce th the was t. 2 (f), & no in good faith.—*Re* L. 22), 32 O. L. R. 570, 3 W. R. 200.— **CAN.**

Act, know that de

$500 from A. for a quarter share in the partnership, & subsequently A. advanced $400 on the security of a chattel mtge., knowing the firm was

st creditors.—*Re* UNITY MANUFACTURING CO., MOORE'S CLAIM, [1923] 1 D. L. R. 81; 3 C. B. R. 396. **CAN.**

7167 xx. .] A bank is in no different position from that of any other creditor in relation to the provisions of Bkpcy. Act, & where a bank knows its customer to be insolvent, it cannot within the three months limited by sect. 31 accept from him or appropriate any money standing to his credit towards liquidation of a liability by the customer to the bank. SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1923] 3 W. W. R. 257. **CAN.**

7167 xxi. .] To make a security given a creditor a fraudulent preference under Fraudulent Preference Act, R. S. S. 1920 (c. 204), s. 4, there must be a concurrence of intent on the part of both debtor & creditor. If the person taking the security be t of any fraudulent intent, he be affected by the fact that e was such an intent, unknown to , in the mind of debtor. WOLFE 54; [1923] 3 W. W. R. 37. **CAN.**

7167 xxii. . . . .]—*Re* THOMPSON, *Ex p.* TRUSTEES, [1923] 4 D. L. R. 1028.— **CAN.**

7167 xxiii. . . .] *Re* LOX, LESTER *v.* PORTER, [1925] 1 D. L. R. 198; 5 C. B. R. 328.— **CAN.**

7167. xxiv . . .] *Re* VOGUE FUR SHOP, LTD., *Ex p.* PAQUET CO., [1925] 1 D. L. R. 785; 5 C. B. R. 386. **CAN.**

g i. —— *able consideration not* of consideration will a suggestion that a to

ave will e will the consideration of

intent of the grantor & the grantee.—DOTY *v.* MARKS, [1924] 3 D. L. R. 687; 55 O. L. R. 147.— **CAN.**

7169 iii. . . *Transactions between relatives.*] Where transactions are between near relations, the *onus* is on the parties to those transactions to show that they were not made fraudulently as against creditors, & for this purpose evidence in corroboration is required. BROWN *v.* BULMER (1922), 65 D. L. R. 180.— **CAN.**

7169 iv. —— .] In transactions between relatives having the effect of defeating the claims of a seller's creditors, even if the purchaser has full knowledge of the seller's intent to defraud, such knowledge is not of itself sufficient to render the transaction void, if it is found to have been *bonâ fide* for full value.—WAGNER *v.* HARROWS, [1923] 1 D. L. R. 186; [1922] 3 W. W. R. 1050.— **CAN.**

7169 v. — . .] *Re* READY & CASS, [1924] 2 D. L. R. 528; 33 B. C. R. 371.— **CAN.**

7169 vi. .—.]—Creditors, knowing of the insolvency of debtor, made a composition of their debts giving an extension of time. Within three *Held*: *prima facie* this constituted a which the cr

D. L. R. 59 3. R. 139.— **CAN.**

7169 vii. The *onus* of proof of an debtor to prefer a lies on the HARDY (No. 2), N. Z. L. R. 613.— **N.Z.**

7172 i. . — *What m* R., who was in possession of s under a lease not in writing ..ff., made an deft co. for the benefit of on the same day executed a s ... of the lease:—*Held*: as the surrender preceded the assignment, it was not invalid as a fraudulent preference or a fraudulent parting with

7172a. —— ——.]—(1) Debtor was adjt bkpt. on his own petition on July 6, 1923, & for a long time prior to that date had been hopelessly insolvent. On June 22, 1923, bkpt. paid applt. £146 by a customer's cheque & on June 21 & 23, 1923, he transferred goods to applt. of the value of £378 in discharge of his indebtedness. Debtor was able to pay his creditors 2s. in the pound, but the transfer of the goods to applt. was arranged on a basis that the debt was worth 20s. in the pound & the goods were not of the class with which applt. was in the habit of dealing, & applt. knew that debtor was unable to pay his debts, & the transaction took place on the eve of bkpcy. when debtor must have known he had no chance of pulling round. The threat of applt. to place the matter in other hands, which amounted to consulting a solr., had no terrors for debtor:—*Held:* the payment & transfer were made with a view to prefer applt. & not in consequence of any pressure which applt. brought to bear upon bkpt.

(2) In establishing a case of fraudulent preference in addition to giving evidence of insolvency the trustee must give some evidence of a view to prefer. *Re* HOYLE, *Ex p.* TRUSTEE, [1924] B. & C. R. 22, D. C.

7183a. Payment to agent of creditor—Whether payment to "person in trust for creditor."]—*Re* MORANT, *Ex p.* TRUSTEES, No. 7114a, *post.*

7217. *Add. Annotation:* **Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7225. *Add. Citation:* 12 L. T. 22.

7225a. —— ——, *Re* COHEN, *Ex p.* TRUSTEE, No. 1065a, *ante.*

7228. *Add. Annotations:* **Refd.** *Re* Prior, *Ex p.* Trustee, [1922] B. & C. R. 1; *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

v. CHARTERED TRUST & EXECUTOR Co., CHARTERED TRUST & EXECUTOR Co. *v.* BELL & BERSEY (1919), 46 O. L. R. 192; 49 D. L. R. 113; 17 O. W. N. 88.—**CAN.**

7173 i. "*Transfer.*"] A mtge. under Sask. Land Titles Act is a "transfer" within the meaning of Bkpcy. Act, s. 2 (2), notwithstanding the provision in the former Act that a mtge. shall have effect as security but shall not operate as a transfer of the land thereby charged.—*Re* CARSON, [1922] 1 W. W. R. 204; 2 C. B. R. 187; 63 D. L. R. 352; 15 Sask. L. R. 91. **CAN.**

PART XX. SECT. 12, SUB-SECT. 2.

m i. *Property conveyed to creditor by — Unregistered re-*

Held: property must pass to the trustee in bkpcy.—*Re* MCCLAIG & BRAY, [1924] 3 D. L. R. 14; 2 W. W. R. 373; 4 C. B. R. 660.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 3.

7186 vi. ——.] In order to make a payment a fraudulent preference within Bkpcy. Act, 1908, s. 79, it is not necessary that the payment should be made in actual contemplation of bkpcy. *Re* LINNEY (H.) & Co., Ltd., [1925] N. Z. L. R. 907. **N.Z.**

1 (p. 863) **i.** —— *Creditor having made inquiries.*]—Where in fulfilment of an agreement, a lien note was given by debtor by way of collateral security for advances to be made by the who had made the fullest into the financial position of had failed to discover his y:—*Held:* the giving of the lien note could not be construed as a fraudulent preference.—*Re* HUGHES MUSIC SALES Co., CO-OPERATIVE MUSIC SUPPLY Co. *v.* GOLD MEDAL FURNITURE MANUFACTURING Co., [1924] 2 D. L. R. 706; 4 C. B. R. 365. **CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—A.

1 (p. 865) **i.** —— *Creditor with knowledge.*]—Actual k

e of debtor's insolvency. *v.* PARRINGTON (1892), 18 A. R. 635.—**CAN.**

w i. ——.]—*The bona fides* of a transaction is negatived if the who receives payments from has knowledge of debtor's insolvency. But if the creditor has no such knowledge & the transaction is one arising out of the ordinary course of business, the fact that debtor was insolvent he made the payments will not preference. *Re* SPEAL, *Ex p.* LUCAS, [1924] 1 D. L. R. 191. **CAN.**

c (p. 863) **i.** ——.] To constitute a preference under Bkpcy. Act, s. 31, there must be a common or concurrent view, *i.e.* intent on the part of debtor & the creditor to create a preference. *Re* BELL, [1922] 1 W. W. R. 1015; 2 C. B. R. 271; 67 D. L. R. 66, 32 Man. L. R. 9. **CAN.**

c (p. 865) **ii.** ——.]—*Re* GOLDSTEIN, [1923] 1 D. L. R. 861; 53 O. L. R. 60. **CAN.**

c (p. 865) **iii.** ——.] The intention of debtor to yield to the dictates of his conscience & to fear the consequence of his crime, negatives the intention to prefer. At any rate, the intention of debtor is not enough, the creditor, too, must intend to obtain a preference. *Re* CARSON, [1924] 1 D. L. R. 492; 55 O. L. R. 619, 4 C. B. R. 683. —**CAN.**

c (p. 865) **iv.** ——.] To constitute a fraudulent preference there must be an intention on the part of debtor to prefer the creditor in question & an intention on the part of that creditor to be preferred. Therefore where A. was a creditor of B., bkpt., & C. paid A. what B. owed him, & C. was therefore substituted in the place of A., as creditor of B.: *Held:* as the money paid by C. never became assets in the hands of B., the transaction could not be set aside. *Re* NIAGARA HATS, LTD., TRUSTEE *v.* BANK OF MONTREAL, [1924] 4 D. L. R. 953.—**CAN.**

c (p. 865) **v.** ——.] If a partner makes a payment to a creditor with intent to prefer him, & there is a like intent on the part of the creditor to be preferred, this will be a fraudulent preference & may be set aside by the

Ex p. MCGOWAN, [1924] 1 D. L. R. 321; 4 C. B. R. 277. **CAN.**

&

[1925] 1 D. L. R. 491. **CAN.**

c (p. 865) **vii.** ——.] A payment made by debtor to a creditor within three months of an assignment in bkpcy. is not deemed fraudulent, unless both creditor & debtor have a concurrent or mutual view or intent to effect a preference. *Re* DEMBY & DEMBY, TRUSTEE *v.* HALIFAX, [1924] 1 D. L. R. 1275; [1924] 3 W. W. R. 705; 34 Man. L. R. 334; 5 C. B. R. [1924] 3 W. W —**CAN.**

c (p. 865) ——.]—*Re* STEVENS, NOVA SCOTI [1925] 2 D. L. R. 233, 5 [illegible] **CAN.**

7224 viii. ——.] Preference must be given voluntarily by debtor, & where a creditor demands a or a mtge., such a demand a pressure & will be sufficient to rebut the suggestion of preferring that creditor. COOPER *v.* WILLIAMS (1922), 65 D. L. R. 57. **CAN.**

p (p. 866) **i.** *Bankruptcy Act,* 1908, s. 79 (3).] "Good faith" in the above subject means absence of knowledge that a preference was intended. *Re* LINNEY (H.) & Co., Ltd., [1924] N. Z. L. R. 90. **N.Z.**

7228 x. A debtor who was unable to pay a certain creditor obtained from her a further loan secured by a mtge. Shortly after debtor made an authorised assignment. The original debt was not included in the mtge., & at the time the creditor was not aware of any available act of bkpcy. on the part of debtor. *Held:* there was no intention to prefer, & the creditor might reasonably conclude that the loan would enable debtor to carry on his business, & the mtge. was declared valid. *Re* GOLDSTEIN, [1923] 1 D. L. R. 861; 53 O. L. R. 60. **CAN.**

7228 xi. There is no fraudulent preference unless bkpt.'s real, dominant, & substantial motive was a desire to prefer the particular creditor over his other creditors. If his real reason was something else, one benefit, to be obtained for himself, the transaction cannot be attacked as a fraudulent preference. OFFICIAL ASSIGNEE *v.* WAIKATO INSURANCE Co. (CO-OPERATIVE SOCIETY), LTD., [1924] N. Z. L. R. **N.Z.**

7235 i. [illegible] assignment of book debt had been made within [illegible] months prec the authorised assignment the burden of [illegible] that it was not a preferen was cast upon the assignee creditor, & evidence of pressure would be of no avail to support the transaction. *Re* WEBB (1921), 61 D. L. R. 654; 1 O. L. R. [illegible]; 2 C. B. R. 16. **CAN.**

7235 iii. ——.] *Re* PROCTOR'S [illegible] FARMERS Co., *Ex p.* BROWN, BURROWS & BURSTALL, LTD., [1923] 1 W. W. **CAN.**

a (p. [illegible] Where a creditor that he have some al advantage if became bkpt. & to Act

BANK *v.* PEIT **CAN.**

d (p. [illegible] i.

[illegible] may s to rebut the

7236. *Add. Annotation :*—**Consd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

7237. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7237a. **Payment in fact giving preference.**]—*Re* DRAGE (J.) & SONS, PALMER & ROBERTS *v.* KNIGHT, No. 7166a, *ante*.

7238. *Add. Annotations :*—**Refd.** *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22; *Re* Drage. Palmer & Roberts *v.* Knight (1926), 134 L. T. 765. **Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7239. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7249. *Add. Citation :*—12 L. T. 22.

7267. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7267a. [illegible] *Re* HOYLE, *Ex p.* TRUSTEE, No. 7172a, *ante*.

7268. *Add. Annotation :* **Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7270. *Add. Annotation :* **Refd.** *Re* Cohen, *Ex p.* Trustee, [illegible] 2 Ch. 515.

7318. *Add. Annotations :* **Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515. **Refd.** *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

7323. *Add. Citation :* *sub nom.* MORGAN *v.* BAKER, 2 Jur. 1068.

7327. *Add. Annotation :*—**Mentd.** Ellis' Tr *v.* Dixon-Johnson, [1924] 2 Ch. 451.

7339a. **Agreement to assign interests—In consideration of advance—No memorandum of agreement within Statute of Frauds.**]—By a parol agreement between a lender & D., the former agreed to lend & did lend D. £2,000 in consideration of the latter's promise to assign certain interests. About a year later, in pursuance of this agreement, D. assigned these interests to the lender, & became bkpt. immediately afterwards. At the time of the assignment no memorandum of the above agreement within Stat. Frauds, s. 4, was in existence, but it was recited in the assignment :—*Held :* the assignment, notwithstanding the failure of bkpt. to set up the statute in answer to the claim by the lender for the performance of the agreement, did not constitute a fraudulent preference or a fraudulent conveyance under 1914 Act, & was valid as against the trustee in bkpcy.—*Re* DAVIES, *Ex p.* MILES, [1921] 3 K. B. 628; *sub nom. Re* DAVIES, *Ex p.* TRUSTEE, 91 L. J. K. B. 81; [1921] B. & C. R. 92.

7340. *Add. Annotation :*—**Apld.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

7341. *Add. Annotation :*—**Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

[illegible] to prefer in giving security by one in insolvent circumstances, if the transaction is attacked after sixty days, yet [illegible] s Act, ss 39 & 41, if the [illegible] of security is attacked within sixty days the transaction is utterly void & nothing will rebut such a result. HOBAN *v.* MCLEAN & UNION BANK OF CANADA, [1919] 2 W. W. R. 80; 12 Sask. L. R. 298. **CAN.**

d (p. 868) ii. [illegible] Ltd. co., a creditor of a [illegible] obtained fi [illegible] mtge. & an [illegible] deft. for [illegible] benefit of [illegible] le within sixty days [illegible] tion with plff. co., & the transaction was not attacked within sixty days, there was no [illegible] v. GILLESPIE [illegible] 47 O. L. R. [illegible]; 54 D. L. R. **CAN.**

e. 868) iii. [illegible] A [illegible] attack [illegible] a [illegible] within [illegible] void, [illegible] it & of [illegible] to [illegible] it, if at [illegible] full [illegible] Act, R. S. [illegible] 2, over the extent [illegible] it.— [illegible] v. PEDLAR, [1921] 1 W. W. R. [illegible] D. L. R. 717. —**CAN.**

(p. [illegible] I. [illegible] T [illegible] insolvency.]— [illegible] NK (1923), [illegible] L. R. 3 C. B. R. 863. **CAN.**

(p. 869) ii. [illegible].]—If a [illegible] a transaction him & the effect is to give to that [illegible] it makes no motive, view, if bkpcy. intervenes within three months, as the creditor could not possibly rebut the presumption of undue preference, & the transaction will be deemed fraudulent & set aside.—*Re* LAVINE, [1924] 3 D. L. R. 318; 4 C. B. R. 661.—**CAN.**

a [illegible] prior to the assignment had not the presumption that such [illegible] creditor, & were fraudulent & void.—*Re* BLACK & WHITE HAT SHOP, LTD., NEWTON *v.* FINKELMAN, [1923] 4 D. L. R. 215; [1923] 2 W. W. R. 782.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—B.

ak. *Pressure — Must be actual.*]—[illegible]" in Bkpcy. Act, s. 31 (2), actual pressure in its original sense, the pressure which is brought to bear by a creditor upon his debtor, & not some secret motive under the impulse of which debtor acts, but which is not actual pressure. *Re* BELL, [1922] 1 W. W. R. 1015; 2 C. B. R. 271; 67 D. L. R. 66; 32 Man. L. R. 9. **CAN.**

al. [illegible].]—The absence of fraudulent intention in the circumstances in which the fund is taken does not within [illegible] 4 D. L. R. [illegible], 55 O. L. R. 649; 4 C. B. R. 683.—**CAN.**

7271 viii. [illegible].]—Evidence disclosing a dominant [illegible] of prosecution or [illegible] debtor to give the security, is to rebut the *prima* [illegible] raised by Bkpcy. Act, s. 31 BELL (1922), 67 D. L. R. Man. L. R. 9; [1922] 1 W. W. R. 1015. —**CAN.**

PART XX. SECT. 12. SUB-SECT. 4.—C.

m i. [illegible].]—[illegible] by [illegible] of testator's estate & applied to exor.'s own uses were restored by him within three months before he was declared a bkpt. :—*Held :* the restoration was not a preferential payment within Bkpcy. Act, s. 31. The estate was not a "creditor" of the exor. within the sect., though in some sense a creditor.—*Re* CARSON, [1924] 1 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683. —**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—E.

r (p. 889) i. *Security to cover a* [illegible] *of past debt.*]—A security given for s a purpose :—*Held :* to be given for valuable consideration & *bonâ fide*, & under pressure, & an action on behalf of other creditors attacking the security was dismissed with costs.—BANQUE D'HOCHELAGA *v.* JEANNOTTE, [1923] 1 W. W. R. 28; 16 Sask. L. R. 523.—**CAN.**

7347 v. [illegible].]—An incorporated co., being in fact insolvent, made in favour of its president, a creditor, as guarantor, a mtge. on its plant to secure him for moneys paid to the co., & by the co. to its bankers, in reduction of the co.'s liability within two months of the co. being adjudged bkpt. :—*Held :* the transaction was free from any taint of fraud; the co. entered into it for the sole object & in the *bonâ fide* expectation & belief that it would thereby be enabled to carry on its business successfully, & not with the view of preferring either the president or the bank to the co.'s other creditors.—BURNS *v.* ROYAL [illegible] OF CANADA, BURNS *v.* GRAHAM (1922), 69 D. L. R. 608; 51 O. L. R. 564; 2 C. B. R. 241.—**CAN.**

7347 vi. [illegible].]—A debtor gave a [illegible] a mtge. & the effect of that [illegible] to give the mtgee. a preference :—[illegible] debtor not [illegible] by his [illegible] for [illegible] the mtge. was that he might [illegible] his business & pay off his other creditors, this was not a fraudulent [illegible] D. L. R. 919; 3 C. B. R. 631.—**CAN.**

7347 vii. [illegible].]—A preference to be [illegible] must be given with the [illegible] of creating rights additional [illegible] to [illegible] by other creditors. & w [illegible] not to give [illegible] creditor an unfair

7351. *Add. Annotation :*—**Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7355. *Add. Annotation :*—**Mentd.** *Re* Mellor, Alvarez *v.* Dodgson, [1922] 1 Ch. 312.

7359. *Add. Annotation :*—**Consd.** *Re* Stanley (1924), 69 Sol. Jo. 36.

7360. *Add. Annotation :*—**Consd.** *Re* Stanley (1924), 69 Sol. Jo. 36.

7361a. —— ——.]—Where a payment has been made to a principal creditor with the intent to prefer a guarantor of the debt, 1914 Act, s. 44, enables the trustee in bkpcy. to recover payment from the person actually preferred.

Circumstances (*see* p. 256, *post*) in which :—*Held :* no case of fraudulent preference had been established.—*Re* Stanley (G.) & Co., [1925] Ch. 148 ; 94 L. J. Ch. 187 ; 133 L. T. 37 ; 69 Sol. Jo. 36 ; [1925] B. & C. R. 1.

7362. *Add. Annotation :*—**Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7391. *Add. Annotation :*—**Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7393. *Add. Annotation :*—**Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7393a. Payment of proceeds of sale of shares Payment before transfer.]—Certain stock-brokers within a fortnight of a receiving order being made against them sold shares for a client & paid the proceeds to him before the transfer was executed. The sale was effected by what is called " a put through " by which a jobber lends his name as purchaser, but no money is paid : —*Held :* the payment was made without pressure & was a fraudulent preference.—*Re* Fellowes, O'Brien, Gordon & Tootal (carrying on business as Ellis & Co.) (1924), 68 Sol. Jo. 478.

7396. *Add. Annotation :* **Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7404. *Add. Annotation :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7405. *Add. Annotation :*—**Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7409. *Add. Annotations :* —**Mentd.** Burchell *v.* Thompson, [1920] 2 K. B. 80 ; Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

7412. *Add. Annotation :* —**Mentd.** Sorrell *v.* Smith, [1925] A. C. 700.

over other creditors, but to enable debtor to extinguish a past debt & to carry on his business & the preferred creditor has no knowledge of any available act of bkpcy. on the part of debtor, such a preference is not fraudulent within Bkpcy. Act.—*Re* Buchannan, [1923] 1 D. L. R. 391 ; 3 C. B. R. 427.—**CAN.**

7347 viii. ——.]—Canadian Bank of Commerce *v.* Treacy, [1924] 2 W. W. R. 193 ; 2 D. L. R. 759.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—F.

7359 ii. ——.] The trustee in bkpcy. of H. under an authorised to recover payments made by H., when in a hopeless of insolvency, for the purpose, as his creditors, defts., knew, of preferring them so that his guarantors might be as far as possible relieved. The payments were made within a few days of H.'s voluntary as were made after the ment :—*Held :* defts. had not at the times of payment notice of any " available act of bkpcy." committed by H. ; the transactions were all before Bkpcy. Act, 1921 (c. 17), s. 3, but the payments were not made " in good faith." —Briscoe *v.* Molsons Bank (1922) 69 D. L. R. 675 ; 51 O. L. R. 614.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—G.

7388 ii. —— *Conveyance of pro for past consideration—Creditor knowledge of existence of other cred* —*Re* David, [1925] 4 D. L. R. 1046 ; *affd.*, [1925] 1 D. L. R. 164 ; 5 C. B. R. 323.—**CAN.**

sm. *Sale by* —*Payment of proceeds of creditor.*]—*Held :* the transaction be set aside for it was not really only a " payment of money to a creditor," out of the general provisions of its & Preferences Act ; R. S. O. 1914 (c. 134), by sect. 6. The propriation of s in part payment of a pref claim, & the proceeds of by the as Macfie *v.* L. 511 ; 50 O. L. R. 452.—**CAN.**

sn. *Cheque obtained from Three before* —*Accepted* not operate an assign- funds of in the hands of the person on it is drawn ; & unless payment by the drawee before the nt it was not a payment protected ls & Preferences Act, s. 6 (1) ; but if paid before the assignment it was a payment in cash at the date when the cheque was paid by the bank.—Rowlatt *v.* Garment (J. & G.) Manufacturing Co. (1921), 64 D. L. R. 88 ; 49 O. L. R. 166.—**CAN.**

7395 iii. —— *Mortgage party to fraud.*]—Debtor granted a mtge. to certain of his creditors. No money changed hands & at the time it was known to debtor & to the creditors, the mtgees., that debtor was insolvent. The mtge. was part of a scheme to give an undue preference : *Held :* void under Assignments for Benefit of Creditors Act, 1898 (P. E. I.) (c. 1), it in Campbell *v.* Gallant, Crockett Royal Bank of Canada, *Re* Milligan Estate (70 D. L. R. 320.—**CAN.**

a (p. 901) **i.** *ent for creditors.*]—Creditors who under a composition affecting substantially the whole of debtor's property are entitled to the protection of Bkpcy. Act, s. 82, as the official assignee, upon de shortly afterwards being ad ju d bkpt., provided the payment was before adjudication & that the creditors had not at the time of such payment notice of any available act of bkpcy. committed before that time & in good faith.—*Re* Cor 35] N. Z. L. R. **N.Z.**

PART XX. SECT. 12, SUB-SECT. 5.

7407 i. *How time calculated ment executed but not filed- filing.*]— An d, executed, & delivered on Aug. 11, was re-executed on Sept. 11, & then filed :—*Held :* the assignment not revocable at the will of as soon as the epted the assignment it took effect of the day of its original execution. 52 O. L. R. 70 ; 3 C. B. R. 200. **CAN.**

ii. —— *Law of Ontario.*]—A impeached as a r. 120 than to the ; *Held :* although the chattel did not come within Bkpcy. Act, under the laws of Ontario must from the Act.—*Re* Davison, [D. L. R. 1049 ; 52 O. L. R. 244.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 6.

7412 ii. —— *Prior assignment of same property to same parties.*] The fact of a prior assignment does not affect the right to set aside a later assignment of the same property to the s, & the setting aside of the it does not affect under the prior assig r. McLean & Union B of Canada, [1919] 3 W. W. R. 1108 ; 50 D. L. R. 123 ; 13 Sask. L. R. 85.—**CAN.**

7412 iii. *Denial that property belongs to bankrupt.*] The words " property belonging to debtor " in Bkpcy. Act, s. 56 (8), have practically the same meaning as " property of debtor " used in sect. 23, & include property of debtor which has been dealt with by himself by transfer to r, & the fact that an alleged of transferee from bkpt. does not admit that the property in question belongs to bkpt. does not prevent an application being brought under the above sect. & Bkpcy. Rule 120, for the delivery of the property to the trustee. *Re* Hoffman, [1921] 2 W. W. R. 521 ; 14 Sask. L. R. 277 ; 59 ... L. R. 238.—**CAN.**

7412 iv. — *Discharge of* A trustee in bkpcy. has no right to set aside a sfer made by bkpt. to a creditor whereby bkpt.'s liability to the creditor is discharged, even though the transfer amounts to a fraudulent preference.—

Trusler, [1924] 1 D. L. R. 947 ; 4 C. B. R. 418. **CAN.**

7412 v. *As against the Crown.*]—The provisions of Bkpcy. Act, not bind the Crown.

— **N.Z.**

7413 viii.

creditor not proper ness. *Ex p.* Tuer Ltd [1924] 2 D. L. R. 41 R. R. 528. **CAN.**

7414 iv. — In *A* Act, R. S. C. 1909 (c. 142), s. 2 days & not after of prior convey- have been made, & " such not prior agreement."—Honor r.

7414a. —— Payment to agent of creditor—Agent paying over sum to principal in course of business.]—A payment by a debtor to an agent who receives the money in the ordinary course of his employment for the use of a creditor is not a payment in favour of a "person in trust for any creditor," within 1914 Act, s. 44. The effect of that sect. is not to render the personal liability of an agent to repay a debt, payment of which he has received on behalf of his principal, greater than his liability in a case where money has been paid to him for the use of his principal in circumstances which entitle the person paying it to recover it back, even though it should turn out that, in fact, the payment constituted a fraudulent preference within the sect.

M. being indebted to G. & also to a co. for the price of goods supplied, on Jan. 14, 1921, paid to C. & B., agents of G. & the co. &, to the knowledge of debtor, authorised to receive the payment, the sum of £1,500 in settlement of the amounts respectively owing to G. & the co. The agents in the ordinary course of their employment received that sum for the use of their principals & paid over part thereof to G. & the balance to the co., such payment being made in good faith, in the belief that the payment was a good & valid payment, in ignorance of the impending bkpcy. of debtor & long before any claim by the trustees in the bkpcy. On Feb. 11, 1921, debtor committed an act of bkpcy. by assigning his property in favour of his creditors, & on Mar. 12, 1921, a receiving order was made against him on which he was adjudicated bkpt. Upon a motion by the trustees of bkpt. for an order on C. & B. as agents, neither of their principals having been made resps., to repay the £1,500 on the ground that the payment was void against the trustees as a fraudulent preference: *Held*: (1) C. & B. received the money merely as agents of & for the use of the creditors in the ordinary course of their employment, & not as "persons in trust for any creditor" within 1914 Act, s. 44; (2) the circumstances under which the money was received & paid over precluded appts. from recovering the money, even though it were proved that the payment, in fact, constituted a fraudulent preference, as to which the ct. did not consider it to be necessary to decide. *Semble*: (3) the personal liability of a person to whom payment has been made "in trust for any creditor" under 1914 Act, s. 44, must depend upon the facts of each case; in particular, whether the trustee had acted in good faith & whether he still held the money or had paid it over to the creditor before having received notice that the payment constituted a fraudulent preference.—*Re* MORANT, *Ex p.* TRUSTEES, [1924] 1 Ch. 79; 93 L. J. Ch. 104; 130 L. T. 398; [1923] B. & C. R. 145.

7418. *Add. Annotation*:—**Mentd.** Sorrell *v.* Smith, [1925] A. C. 700.

7428. *Add. Annotations*:—**Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Hudderstield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52. **Mentd.** Edwards *v.* Motor Union Insce. (1922), 128 L. T. 276.

7430. *Add. Annotation*:—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7438. *Add. Annotations*:—**Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835. **Mentd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87.

7439. *Add. Annotation*:—**Mentd.** *Re* Mellor, Alvarez *v.* Dodgson, [1922] 1 Ch. 312.

7440. *Add. Annotation*:—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7442. *Add. Annotation*:—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7463. *Add. Annotation*:—**Mentd.** French *v.* Gething, [1922] 1 K. B. 236.

7483a. — — 1914 Act, s. 45.]—*Re* WETHERED, *Ex p.* SALAMAN, No. 6858a, *ante*.

7490. *Add. Annotation*:—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7512. *Add. Annotation*:—**Mentd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7519. *Add. Annotation*:—**Mentd.** The Joannis Vatis, [1922] P. 92.

7520. *Add. Annotation*:—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 791.

7543. *Add. Annotation*:—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 791.

7546a. — That bankruptcy notice served on debtor & of petitioning creditor's intention to take bankruptcy proceedings.]—Deft. to an action, in which the trustee in bkpcy. claimed that certain farm stock in a bill of

. W. R. 1105; 50 D. ask. L. R. 85. **CAN.**

1 D., [1924] 2 W. W. R. 215; 4 C. B. R. 632, [1924] 2 D. L. R. 101.— **CAN.**

creditor [*Re* LOSCOMBE, (1922), 52 O. L. R. 570; 3 C. B. R. 200. **CAN.**

PART XX. SECT. 13. SUB-SECT. 1.

7430 v. — — MERCHANTS BANK OF CANADA *v.* KEN MCCARY & Co., [1921] 1 W. W. R. 940, 14 Sask. L. R. 187. **CAN.**

a bill of of certain cha

at the of S. not in the b On the session the r sold, on

in the bill of to S. who left C

the bill of ted the d & the to S., it was too late to

TRUST CO., LTD. *v.* N & SUPPLY

PART XX. SECT. 13, SUB-SECT. 2. A. (a).

By y. Act a creditor who a n. in- quir will be held to have of t 'vency of the at t time will

Ex p. TH L. —**CAN.**

under a a that a s in the mind of an ordinary of payee ought to inquire closely into all the circumstances. Otherwise, if the payer becomes bkpt., the payment will be construed as a fraudulent preference. *Re* STERNBERG (1924), 27 O. W. N. 212, *varying*, [1924] 2 D. L. R. 492; 4 C. B. R. 528.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 2. A. (b).

knows of an act of bkpcy. or wilfully refrains from making such in

or where the facts are such that an of bkpcy. had be committed, such a d to have notice.—

D L. R. 101; 4 C. B. R. 84.— **CAN.**

7537 iv. — *That de borrowed.*]— *Held*: not of owledge of insolvency.— *Re* WEBB 921), 64 D. L. R. 633; 51 O. L. R. 2 C. B. R. 16.— **CAN.**

7537 v. — *That debt money.*]— *Held*: not to er that a creditor had const tice of an act of bkpc ROBBINS, *Ex p.* ROOT, [1924] 3 D. L. R. 90; 4 C. B. R. 670.—**CAN.**

sale given to deft. by bkpt. was in the reputed ownership of bkpt. & formed part of his estate, had been informed of the service on bkpt. of a bkpcy. notice, & later had been informed by the petitioning creditor that he was going to take bkpcy. proceedings against his debtor:—*Held:* a mere statement of intention to take bkpcy. proceedings amounted at most to a threat to file a petition, &, falling short of a notice of the actual presentation of a petition, it was not constructive notice of an available act of bkpcy.—HERBERT'S TRUSTEE *v.* HIGGINS, [1926] Ch. 794; 95 L. J. Ch. 303; 135 L. T. 321; 42 T. L. R. 525; 70 Sol. Jo. 708; [1926] B. & C. R. 26.

7574. *Add. Annotation:*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

7577. *Add. Annotations:*—**Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70. **Mentd.** *Re* Fairley, [1922] 2 Ch. 791.

7578. *Add. Annotation:* — **Mentd.** *Re* Fairley [1922] 2 Ch. 791.

7601. *Add. Citation:—revsg.* S. C. *sub nom. Re* WIX, *Ex p.* CHATTERBY, 29 W. R. 400.

7603a. —— Employee of company—Refusal of company to pay—Termination of employment alleged.]—Bkpt., after his adjudication, entered into an agreement of service in writing for one year at a salary of £1,000, the agreement being signed in the name of a joint stock co., underneath which was the name of the managing director followed by the words, "managing director." An order was subsequently made by a registrar, under 1914 Act, s. 51 (2), that £300 out of a sum of £116 13*s.* 4*d.* due under the agreement from the co. &/or its managing director to bkpt. be forthwith paid by them to the trustee of the estate of bkpt. When the registrar made that order the only parties before the ct. were the trustee & bkpt. Neither the co. nor its managing director paid the £300, but alleged that nothing was due to bkpt. upon the ground that he had broken the agreement by absenting himself from his employment. The trustee then served a notice of motion in the High Ct. upon the co. & its managing director asking for a declaration that he was entitled to the £300 from resps. as forming part of the property of bkpt., & for an order for payment of that amount. The judge found that no dismissal had taken place nor had bkpt., by his conduct, given notice of his intention not to perform the contract which could be treated by resps. as an anticipatory breach. No point was taken as to whether the managing director was properly made a resp.:—*Held:* in the circumstances there must be a declaration & order for payment in terms of the notice of motion.—*Re* LAVEY, *Ex p.* TRUSTEE, [1920] 1 K. B. 674; 89 L. J. K. B. 24; 122 L. T. 502; [1920] B. & C. R. 43; *subsequent proceedings*, [1920] B. & C. R. 186.

7626. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R.

7636. *Add. Annotation:*—**Mentd.** Brown *v.* Gregson, [1920] A. C. 860.

7638. *Add. Annotations:*—**Refd.** *Re* Leeds & Batley Breweries & Bradbury's Lease, Bradbury *v.* Grimble, [1920] 2 Ch. 548; Mellroy *v.* Clements (1923), 67 Sol. Jo. 402; Rider *v.* Ford, [1923] 1 Ch. 511.

7662. *Add. Annotation:* **Mentd.** Spencer *v.* Ashworth, Partington, [1925] 1 K. B. 589.

7665. *Add. Annotation:*—**Mentd.** Betts *v.* Price (1924), 40 T. L. R. 589.

7681. *Add. Annotation:*—**Mentd.** Gray *v.* Spyer, [1922] 2 Ch. 22.

7681a. —— Statutory tenancy—Under Rent Restriction Acts.]—PARKINSON *v.* NOEL, No.

7685. *Add. Annotation:* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

7686. *Add. Annotation:* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

7689a. Shares Subject to equitable charge.]—The registered owner of fully paid shares in a private co. charged them in favour of W., & handed him the certificates & a blank transfer. He subsequently gave other equitable charges to other mtgees. On the owner's bkpcy. his trustee disclaimed "all my interest" in the shares under 1914 Act, but, as the blank transfer was not completed & lodged & none of the mtgees. applied for a vesting order, bkpt.'s name remained on the register: *Held:* (1) as between himself & the co., bkpt., so long as his name remained on the register, was entitled to vote in respect of the shares, though, as between himself & the mtgees., he could only vote as they dictated, (2) the trustee could not have disclaimed more than the equity of redemption in the shares. *Qu.:* whether a trustee can disclaim unincumbered fully paid shares.—WISE *v.* LANSDELL, [1921] 1 Ch. 420; 90 L. J. Ch. 178; 124 L. T. 50; 37 T. L. R. [1920] B. & C. R. 115.

7692. *Add. Annotation:* **Refd.** Watt [illegible] Ch. 962.

7704. *Add. Annotation:* **Refd.** Wise *v.* Lansdell, [1921] 1 Ch. 420; Laster, *Ex p.* Bradford Corpn., [1926] Ch. 119. Overseers & Bra[illegible] **Mentd.** Victoria [illegible] *v.* Vancouver Island (Bp.), [1921] 2 A. C. [illegible] O. W. N. 90. CAN.

PART XX. SECT. 13, SUB-SECT. 2.—C.

7581 vi. —— ——.]—Every payment made by bkpt. within a short [illegible] his bkpcy. is regarded with [illegible] by the ct. as likely to be a fraudulent preference. The *onus* is on the payee to show that he had no [illegible] or constructive, that [illegible] consideration for the [illegible] & that he was actuated by no motive in accepting such [illegible] M & Co 2 D. L. R. [illegible] C. B. R. 855.—

7581 vii. —— ——.]—[illegible] ALTY Co., *Re* SHULMAN, (1923) D. L. R. 316; 3 C. B. R. 46; *affd.*, 2 [illegible]

PART XX. SECT. 16, SUB-SECT. 1.

7676 i. *Sufficiency of* [illegible] *by* [illegible] *of* [illegible] *Act* [illegible] *by law* [illegible] 13 (1), [illegible] to all [illegible] *If* [illegible] Act [illegible] t. [illegible] their [illegible] rent [illegible] th full [illegible] -ige of [illegible] of election to [illegible] McKAY (1921), 51 D. L. [illegible] C. B. R. 59; 64 D. L. R. 699 CAN.

PART XX. SECT. 16, SUB-SECT. A.

7676 i. *Sufficiency of* [illegible] *by* [illegible] *of* [illegible] By [illegible] & also by the [illegible] (1923) 60 S. C. 52 CAN.

[illegible] *statement* No [illegible] *Held:* the [illegible] could [illegible] a disclaimer [illegible] B. C. R. CAN.

7751. *Add. Annotations :*—**Consd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184. **Reld.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7756. *Add. Annotation :* **Consd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7756a. **Right to compensation.**]—Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom or statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—*Re* WADSLEY, BETTINSON'S REPRESENTATIVE *v.* TRUSTEE (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76, D. C.

7764a. **Liability for rates for period of occupation until disclaimer.**]—Where a trustee in bkpcy. goes into occupation of onerous property & subsequently disclaims the property, he is liable to pay the rates on the property for the period of his occupation.—*Re* LISTER, BRADFORD OVERSEERS & CORPN. *v.* DURRANCE (1925), 95 L. J. Ch. 115; 42 T. L. R. 143; 89 J. P. Jo. 692, C. A; *sub nom. Re* Laster, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 119; *sub nom. Re* Lister, *Ex p.* Bradford Overseers & Corpn. *v.* Durrance, 134 L. T. 178; 90 J. P. 33; 24 L. G. R. 67; [1926] B. & C. R. 5.

7765. *Add. Annotation :* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

7766. *Add. Annotation :* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

7767. *Add. Annotation :* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

7769. *Add. Annotations :* —**Reld.** Harrison *v.* Holland, [1921] 3 K. B. 297; Chillingworth *v.* Esche, [1923] 1 Ch. 576. **Mentd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

7775. *Add. Annotation :* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

7776. *Add. Annotation :* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

7778. *Add. Annotations :* **Consd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184. **Reld.** *Re* Laster, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7778a. ——.]—After a debtor has been adjudicated bkpt. & his trustee has disclaimed a lease belonging to him, the property thereby demised revests in the landlord under 1914 Act, s. 54 (2), & he may obtain an order for delivery of possession. Neither the subsequent annulment of the bkpcy. nor the acceptance by the landlord from debtor of rent due for a period ending before the disclaimer operates to revest any interest in the lease in debtor.—*Re* HYAMS, *Ex p.* LINDSAY *v.* HYAMS (1923), 93 L. J. Ch. 184; 130 L. T. 237; [1923] B. & C. R. 173, C. A.

7782a. —— **Rights as to statutory tenancy—Under Rent Restriction Acts.**]—The effect of a disclaimer by a trustee in bkpcy. of bkpt.'s interest in a quarterly tenancy is to deprive the tenant of any further interest in the demised premises, &, consequently, he is debarred from relying on a statutory tenancy therein under the above Acts.—REEVES *v.* DAVIES, [1921] 2 K. B. 486; 90 L. J. K. B. 675; 125 L. T. 354; 37 T. L. R. 431, C. A.

Annotations :—**Reld.** Mellows *v.* Low, [1923] 1 K. B. 522; Parkinson *v.* Nool, [1923] 1 K. B. 117.

7782b. —— —— ——.]—A statutory tenancy under Increase of Rent & Mortgage Interest Restrictions Act, 1920 (c. 17), is "property" of the tenant within 1914 Act, s. 167.

Pltfs. having let to deft. a dwelling-house to which the Act of 1920 applied, deft. retained possession of it after the expiration of the term under the provisions of that Act. Deft. was afterwards adjudicated bkpt., & the trustee in bkpcy. disclaimed any interest in the house. In an action by pltfs. against deft. for possession of the house & mesne profits :—*Held :* (1) the statutory tenancy to which deft. became entitled under the Act of 1920 was "property" within 1914 Act, s. 167, & passed under sect. 53 to his trustee in bkpcy; (2) on disclaimer thereof by the trustee that interest in the premises ceased to exist & was no longer available for the benefit of deft., & consequently pltfs. were entitled to judgment.—PARKINSON *v.* NOEL, [1923] 1 K. B. 117; 92 L. J. K. B. 361; 128 L. T. 538; 67 Sol. Jo. 184; 21 L. G. R. 130.

Annotations :—**Consd.** Keeves *v.* Dean, Nunn *v.* Pellegrini, [1923] 2 K. B. 801. **Reld.** Mellows *v.* Low, [1923] 1 K. B. 522.

7789a. **On mortgagee—Of shares—Bankrupt's name still on register.**]—WISE *v.* LANSDELL, No. 7689a, *ante*.

7791. *Add. Annotations :*—**Reld.** Wise *v.* Lansdell, [1921] 1 Ch. 420; *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149. **Mentd.** Victoria City *v.* Vancouver Island (Bp.), [1921] 2 A. C. 384.

7811. *Add. Annotation :*—**Consd.** *Re* Farrow's Bank, [1921] 2 Ch. 164.

PART XX. SECT. 18, SUB-SECT. 5.—E.

7761 i. *On trustee. Right to remove fixtures.*]—Where A. purchased a tenant's interest in leased premises including trade fixtures & the last tenant had made an assignment for the benefit of creditors to deft., who gave a disclaimer :—*Held :* the fixtures belonged to deft., & he had the right to remove them within the three months' delay given by Creditors' Trusts Deeds Act, s. 55 (1).—WINTERMUTE *v.* TAYLOR, (1919) 2 W. W. R. 883.—**CAN.**

ad. *On creditors—Disclaimer of assets.*]—A secured creditor put in a claim against bkpt.'s estate for certain assets, which assets the trustee disclaimed :—*Held :* the ct. could not order the trustee to accept those assets as part of the estate.—*Re* CANADIAN CARPET & COMFORTER MANUFACTURING CO., *Ex p.* A.-G. FOR CANADA, [1924] 4 D. L. R. 1307; 5 C. B. R. 54.—**CAN.**

7770 ii. —— *Right to possession.*]—A monthly tenant remained in possession after being adjudicated insolvent. The official assignee having disclaimed interest :—*Held :* the landlord was entitled to an order for possession.—*Re* ABUBAKER HAJI ABDULLA (1924), I. L. R. 48 Bom. 350.—**IND.**

7787 iii. ——.]—A disclaimer of a lease by an assignee for the benefit of creditors :—*Held :* to operate as a forfeiture & not as a surrender, & to effect the termination of a sub-lease granted by the assignor.—KERR *v.* CAPITAL GROCERY, LTD., [1921] 1 W. W. R. 1221; 59 D. L. R. 388; 1 C. B. R. 490.—**CAN.**

7788 i. —— *Liability to ejectment.*]—Where a tenant, who has replaced bkpt. on disclaimer of the lease by the trustee, has begun an action of ejectment against the sub-tenant, who refuses to quit the premises, if the latter does not avail himself of his rights under 11 & 12 Geo. 5, c. 17, s. 43, but contests the action & allows it to proceed to judgment, he cannot then present a petition invoking his rights.—SIMONIER *v.* DUFRESNE (1922), Q. R. 60 S. C. 525.—**CAN.**

7821. *Add. Annotations :*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184 ; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7832. *Add. Annotations :*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184 ; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7835. *Add. Annotations :*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184 ; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7836. *Add. Annotations :* **Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184 ; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7870. *Add. Annotation :* **Mentd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

7913. *Add. Citation :*—12 L. T. 25.

7951. *Add. Annotation :* **Mentd.** Pirie *v.* Johnson (1926), 70 Sol. Jo. 1023.

7971. *Add. Annotation :*—**Mentd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

7974. Delete the words "the damage suffered, if any . . . claim should be made."

7984. *Add. Annotation :*—**Consd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

7987. *Add. Annotation :* **Mentd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

7992. *Add. Annotation :* As *to* (1) **Refd.** Ellis *v.* Torrington (1919), 89 L. J. K. B. 369.

8002. After this case add "*See, now*, Order of the Lord Chancellor, dated Aug. 15, 1921 [1921] W. N. 362."

Part XXI.—Actions, Arbitrations, and other Legal Proceedings by and against Trustee and Bankrupt.

PART XX. SECT. 16, SUB-SECT. 6.

7815 i. *In what cases—Trustee elects not to take.*]—The order for possession under Bkpt. & Insolvent Act, 1857 (*Ir.*), s. 271, is consequential upon the order to assignees to elect, & though the judge has a discretion, yet upon the assignees electing not to take the premises, there is a *primâ facie* duty upon the judge to make the order for possession unless good reason is shown to the contrary, the object of the sect. being to protect the landlord from being left with a bkpt. tenant.—*Re* KEANE (1922), 57 I. L. T. 5.—**IR.**

PART XX. SECT. 17, SUB-SECT. 3.

80. *Property claimed by lienholders & mortgagees.*]—*Held :* the prohibition in Landlord's Rights (Bkpcy.) Act, Alta., 1924 (c. 12), s. 3, as to distress for rent not applicable to above property, the estate having no beneficial interest therein.—*Re* HAMILTON & OAKES, [1925] 2 D. L. R. 514 ; [1925] 1 W. W. R. 172 ; 5 C. B. R. 465.—**CAN.**

PART XX. SECT. 17, SUB-SECT. 4.

r i. ——.]—A sheriff who has seized & is in possession under a landlord's distress warrant prior to the tenant making an authorised assignment under Bkpcy. Act, is bound to hand over the goods to the trustee in bkpcy. on demand.—*Re* WORK & DAY ESTATE, [1921] 2 W. W. R. 94 ; 58 D. L. R. 377 ; 1 C. B. R. 553.—**CAN.**

PART XX. SECT. 17, SUB-SECT. 5.

d i. —— *Goods seized by landlord—Liability for costs of seizure.*]—*Held :* the trustee was entitled to the possession of the goods without paying the costs of the seizure.—GARDNER *v.* GUY STREET GARAGE (1922), 70 D. L. R. 57.—**CAN.**

PART XXI. SECT. 3, SUB-SECT. 1.

k (p. 977) **i.** —— *Production of power of attorney.*]—A trustee resident in Ontario was replaced by a trustee resident in Quebec, who was authorised to proceed with the action of the former trustee but failed to produce any power of attorney :—*Held :* production not necessary.—MORRIS *v.* KLEY, DEMERS, GARNISHEE (1922), 66 D. L. R. 330.—**CAN.**

st. *Duty to sue in official name.*]—Pltf., in his official capacity as trustee in bkpcy., used his own name instead of his official title in an action :—*Held :* to avoid any difficulty the action should be treated as an issue directed under Bkpcy. Rule 120, as the form of action only affected the question of costs. It was of no real consequence as Bkpcy. Act, s. 16, providing that the trustee may sue in his own name, is permissive.—FITZGERALD *v.* McMORROW, [1923] 4 D. L. R. 619 ; 52 O. L. R. 383 ; 3 C. B. R. 29. **CAN.**

7998 ii. ——.] Except in those cases where a creditor is authorised under Bkpcy. Act, s. 30, to take proceedings, any proceeding to be taken for the benefit of bkpt.'s or authorised assignor's estate must be taken by the trustee or authorised assignee.—HOULDING *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1921] 2 W. W. R. 899 ; 14 Sask. L. R. 356. **CAN.**

8000 iii. —— *Proceedings begun in wrong court Transfer of proceedings.*]—Where proceedings had been commenced in the wrong ct. : *Held :* the proceedings should be continued under Bkpcy. Act, r. 120, & an order transferring the proceedings to the bkpcy. side should be made if necessary.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1922] 3 W. W. R. 209 ; 68 D. L. R. 762.—**CAN.**

8000 iv. —— *Appeal at chambers for declaration Matter within jurisdiction of Bankruptcy Court.*] Where there was no question in the action that could not be fully & effectually dealt with by the judge in bkpcy. in the summary way provided by r. 120 ; —*Held :* the application must be referred to the judge in bkpcy. to be dealt with by him, an *interim* injunction to stand in the meantime.—EASTERN TRUST CO. *v.* LLOYD MANUFACTURING CO., [1923] 2 D. L. R. 852 ; 56 N. S. R. 246 ; 3 C. B. R. 719. **CAN.**

8000 v. —— *Action to set aside settlement made by bankrupt :* A trustee in bkpcy. brought action in the Supreme Ct. to set aside a settlement made by bkpt. in favour of deft. & voidable under Bkpcy. Act, s. 29 : *Held :* the action was improperly taken ; the trustee should have proceeded under r. 120, which provides a summary method of disposing of matters of this kind by a motion in chambers, which may afterwards take the *form of an issue or trial ;* the ct. should discountenance costly proceedings when summary & inexpensive proceedings are open to the trustee.—STILLWATER LUMBER & SUNSET CO. *v.* CANADA LUMBER & TIMBER CO., [1923] 2 D. L. R. 900 ; 32 B. C. R. 81 ; [1923] 1 W. W. R. 1033. **CAN.**

8000 vi. —— *Proceedings to set aside sale or transfer by bankrupt.* An action by a trustee in bkpcy. to set aside a conveyance by debtor must be commenced as prescribed by r. 120, by summary application to the bkpcy. judge in chambers, & not by a writ of summons in the Ct. of K. B. *Re* VISCOUNT GRAIN GROWERS CO-OPERATIVE ASSOCN.'S TRUSTEE *v.* BRUNSWELL & ROYAL BANK, [1924] 3 D. L. R. 803 ; [1924] 3 W. W. R. 41 ; 5 C. B. R. 91. **CAN.**

8000 vii. *Appellate court Appeal against judgment in favour of bankrupt Judgment assigned by bankrupt to third party.*] *Held :* the trustee in bkpcy. had a right to resume the action in the interest of the estate.—FOLKSMAN *v.* HART, *Re* BARTLEY (1922), 68 D. L. R. 288 ; 2 C. B. R. 530. **CAN.**

8k. *Application for interim injunction Undertaking as to damages.*] *Held :* should be made binding on a trustee in bkpcy. personally, when suing in his official capacity, unless the ct. is satisfied that the estate in his hands will be sufficient to answer damages. A trustee is under no obligation to take such a proceeding without proper indemnity from the creditors.—TURNER'S TRUSTEE *v.* TURNER, [1923] 3 D. L. R. 1097 ; 32 O. L. R. 671 ; 3 C. B. R. 81. **CAN.**

PART XXI. SECT. 3, SUB-SECT. 2.

ol. *Against holder of lien note on chattels Description of chattels alleged insufficient.*] *Held :* the trustee had no status to attack the lien note & it was valid as against him. The holder of the note must, on demand by the trustee, identify the chattels within ten days.—*Re* GAUTHIER, *Ex p.* CAMPBELL (1922), 68 D. L. R. 783. **CAN.**

8028 ii. —— *Action already brought by bankrupt.*]—*Held :* it might be continued by the trustee.—BRENNER *v.* AMERICAN

8033. *Add. Annotation :*—**Refd.** Anglo-Baltic & Mediterranean Bank *v.* Barber, [1924] 2 K. B. 410.

8034. *Add. Annotation :*—**Mentd.** Ord *v.* Ord, [1923] 2 K. B. 432.

8040. *Add. Annotation :*—**Mentd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

8051. *Add. Annotation :*—**Mentd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

8064. *Add. Annotation :* —**Refd.** Ord *v.* Ord, [1923] 2 K. B. 432.

8069. *Add. Annotation :* —**Mentd.** Howell *v.* Evans (1926), 134 L. T. 570.

8081. *Add. Annotation :*—**Mentd.** Ord *v.* Ord, [1923] 2 K. B. 432.

8092. *Add. Annotations :* —**Mentd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871; Jones (Holloway) *v.* Woodhouse, [1923] 2 K. B. 117.

8097. *Add. Annotation :* **Consd.** Knight *v.* Ponsonby, [1925] 1 K. B. 545.

8104a. — **Costs of carrying out order of court.**]—Upon a motion by a trustee in bkpcy. to which bkpt.'s wife was resp. a declaration was made that certain furniture which was upon premises occupied by bkpt. & his wife formed part of the property of bkpt. divisible among the creditors, & the ct. ordered the wife to account on oath before a registrar for the furniture & to pay the taxed costs of & incident to the motion. At the end of the declaration & order a provision was inserted, at the request of, & by way of indulgence to, the wife that, with a view to the furniture being bought by or on behalf of the wife from the trustee at a valuation by an independent valuer to be appointed by the parties or in case of difference to be appointed by the judge, & the wife undertaking not to part with or dispose of the furniture, execution should not issue except by leave of the judge. The furniture was valued by a firm of valuers selected by the wife out of three firms suggested by the trustee, & bought by or on behalf of the wife at a price based upon the valuation. Upon the taxation of the trustee's solrs.' bill of costs, the taxing master disallowed as against the wife the fee paid by the trustee to the firm of valuers, upon the ground that the costs relating to the purchase of the furniture by or on behalf of the wife under the valuation did not come within the order, & were not costs of carrying it out. On a motion by the solrs. to review the taxation :—*Held :* the taxation must be reviewed & the fee for the valuation allowed as against the wife, inasmuch as it formed part of the costs of carrying out the order & was therefore within the rule that where costs of suit are given generally by decree at the hearing, the subsequent costs of working out the directions of the decree will be included.—*Re* LAVEY, *Ex p.* COHEN & COHEN, [1920] 3 K. B. 625; 90 L. J. K. B. 31; [1920] B. & C. R. 182; *subsequent proceedings*, [1921] 1 K. B. 344.

8104b. —— **Costs of transcript of shorthand notes of evidence.**]—The trustee by motion applied against resp. to impeach certain transactions & gave formal notice by letter that he would read in support of the motion the transcript of the shorthand notes of the evidence given by witnesses at a private sitting. This motion was dismissed with costs. On taxing resp.'s bill of costs the taxing master disallowed part of the transcript as irrelevant to the motion & reduced counsel's fees accordingly. On motion for a review of taxation :—*Held :* having regard to the terms of the notice to read the transcript resp.'s solr. was justified in bespeaking & paying for the whole of the transcript, & it was his duty to supply the whole transcript to counsel, &, accordingly, resp. was entitled to all the costs of & consequential upon so doing.—*Re* MARKS, *Ex p.* VANN, [1923] B. & C. R. 92.

MUTUAL Co., (1920) 19 O. W. N. 239, 50 D. L. R. 702, 1 C. B. R. E. 375. **CAN.**

8034 ii. — *Unpaid purchase price of shares Sold by broker.*] Where a trustee in bkpcy. gave shares belonging to bkpt.'s estate to a broker to be sold by him & the broker became bkpt.—*Held* the trustee was entitled to sue the purchaser for the price of the shares. FINLAYSON *v.* BALFOUR, WHITE & CO., *Re* THORNTON DAVIDSON & CO. (1922), 70 D. L. R. 66. **CAN.**

8040 iii. *Action to recover money paid by bankrupt in breach of trust.*] The trustee in bkpcy. has no right of action, at least without authority from the *cestuis que trust*, to recover trust money which was held by bkpt. & paid by him in breach of trust to others. SAUER & ARNOLD, LTD. *v.* DOMINION BANK, [1922] 2 W. W. R. 280, 68 D. L. R. 757. **CAN.**

8051 i. *Proceedings to recover land acquired collusively by third party.*] TRUSTEE, ETC. *v.* PARK (1921), 12 N. L. R. 1. **S. AF.**

8064 i. *Proceedings to set aside writ issued by mortgagee to enforce security.*] An assignment under Bkpcy. Act does not prevent the holder of a mortgage upon a vessel from enforcing his security before the Exch. Ct. in Admlty., & a motion by the assignee to set aside the writ of summons & warrant of arrest issued in the ct. by the mtgee. against the ship should be dismissed with costs. The only right of the assignee under Bkpcy. Act is to defend the action & he cannot otherwise interfere therein. WHITE & CO. *v.* THE IONIA (1922), 69 D. L. R. 91, 20 Exch. C. R. 327. **CAN.**

PART XXI. SECT. 3, SUB-SECT. 6.

8099 v. BURNS *v.* GRAHAM, [1923] 4 D. L. R. 1111; 53 O. L. R. 226, 1 C. B. R. E. 190. **CAN.**

8099 vi. — *Action commenced without obtaining indemnity from creditors.*] *Held :* if it were necessary under Bkpcy. Act, s. 68 (2), & r. 51, that a special reason for awarding costs against the trustee personally should be assigned, it was the failure to arrange an indemnity before indulging in speculative litigation knowing that he had no assets. THORNE *v.* CANADIAN STEERING WHEEL CO., (1923) 4 D. L. R. 1127; 52 O. L. R. 480; 2 C. B. R. 445. **CAN.**

8099 vii. — *Held :* Bkpcy. Act, s. 68 (2), provides that "subject to the provisions of this Act & to General Rules, the costs of & incidental to any proceeding in ct. . . . shall be in the discretion of the ct." The word "ct." has impliedly a wider meaning than that given in the interpretation clause, & the sect. applies to the Ct. of Appeal. In the present case the clause making the trustee personally liable should not be struck out.—*Re* KWONG TAI CHONG CO., ASSIGNMENT (1922), 65 D. L. R. 132; (1922) 2 W. W. R. 220, *sub nom.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* JANG BOW KEE & YIN SHEE, (1922), 31 B. C. R. 40. **CAN.**

PART XXI. SECT. 4.

8105 iv. —] If a creditor desires to proceed against the trustee in another province he must apply to the ct. having original jurisdiction for an order under Bkpcy. Act, s. 71 (2), & the judge possessing discretionary powers would be entitled to consider whether in all the circumstances it was advisable to ask for the assistance of a bkpcy. ct. in another province. When the cts. of any one province are seized with the administration of an insolvent estate, they should not permit any other ct. to interfere except with its leave or concurrence.—*Re* BRYANT ISARD & CO., [1924] 1 D. L. R. 217; 1 C. B. R. 317.—**CAN.**

8105 xi. *Action to recover possession of partly built ship. For purpose of completion.*]—A judge of the Bkpcy. Ct. may grant an application for recovery from the trustee in bkpcy. of possession of ships partly built & materials in connection therewith, & the necessary portion of bkpt.'s building yards claimed by appct. under a lien to secure the completion & delivery of ships in accordance with bkpt.'s contract & which prior to the order declaring the bkpcy. had been taken possession of by appct., & subsequently by the trustee. Such appct., although not a "creditor" or "secured creditor" under Bkpcy. Act, comes within the words "any other person

8114. *Add. Annotation :*—**Refd.** *Re* Wait, [1926] Ch. 962.

8115. *Add. Annotation :*—**Mentd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 491.

8138a. —— —— **After-acquired property.**]—An undischarged bkpt. can maintain an action in relation to after-acquired property subject to the right of his trustee to intervene & claim it.—DYSTER *v.* RANDALL & SONS, [1926] Ch. 932; 95 L. J. Ch. 504; 135 L. T. 596; 70 Sol. Jo. 797, C. A.

8167. *Add. Annotation :* — **Mentd.** Manton *v.* Brocklebank, [1923] 1 K. B. 406.

8195. *Add. Annotations :*—**Distd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200. **Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82. **Mentd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249.

8200. *Add. Annotations :*—**Consd.** Knight *v.* Ponsonby, [1925] 1 K. B. 545. **Refd.** Maatschappij voor Fondsenbezit *v.* Shell Transport & Trading Co., [1923] 2 K. B. 166.

8281a. —— **To apply for judgment in default of defence—Draft minutes to be shown to official receiver.**]—Where after action brought a receiving order in bkpcy. was made against deft., on a motion for judgment on minutes in default of defence the ct. made the order in the terms of the minutes, but directed that before it was drawn up the draft minutes should be shown to the official receiver, who was to be at liberty to apply to the ct. with regard thereto if he should think fit. HATTON *v.* DENISON (1926), 70 Sol. Jo. 565.

8290a. —— **Defendant making substantial counterclaim.**]—An action against a deft. who makes a substantial counterclaim, & against whom a receiving order has been made after writ issued, will be stayed pending the result of an application to adjudicate him bkpt.—FRANCO *v.* DUTTO, [1923] W. N. 40.

8304. *Annotations :* - For "*Re* Somes, Stewart *v.* Somes (1895), 73 L. J. 359" read "*Re* Somes, Stewart *v.* Somes (1895), 73 L. T. 350."

8306. *Add. Citations :* -*previous proceedings, sub nom. Re* SOMES, STEWART *v.* SOMES (1895), 73 L. T. 359, C. A.

8331. *Annotation :* - For "**Mentd.** *Re* Bagley, [1911] 1 K. B. 317, C. A.," read "**N.F.** *Re* Bagley, [1911] 1 K. B. 317."

8332. For "*Held :* it was necessary," etc., read "*Held :* it was not necessary," etc.

Add. Annotation : **Mentd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

Part XXII.—The Debtors Acts and Bankruptcy Offences Generally.

8346. *Add. Annotation :*—**Mentd.** Rutter *v.* Rutter (1921), 124 L. T. 796.

8410. *Add. Annotation :* **Mentd.** Jordy *v.* Vanderpump (1920), 64 Sol. Jo. 324.

8435. *Add. Annotation :* —**Consd.** *Re* Whaley, *Ex p.* Official Receiver, [1921] 2 K. B. 623.

8435a. **Motion to commit by official receiver acting as trustee—Necessity for affidavit.**]—Bkpts. were musical artists, & on Sept. 16, 1920, the registrar made orders for each of them to pay £1 a week out of their respective salaries under 1914 Act, s. 51 (2). On Jan. 13, 1921, upon the application of the official receiver as trustee, under sect. 53 (1) of the Act, no trustee having been appointed, & it appearing to the ct. that bkpts., as partners, were then in receipt of at least £200 a week under a contract with the A. Co., the above orders were varied, & orders were made that during the continuance of the engagement of bkpts. at the A. each should pay weekly £25 out of his salary to the official receiver during the bkpcy., the first payment to be made on Jan. 15, 1921, with liberty to bkpts. to apply in the event of the employment with the A. Co. being determined. Appeals from these orders were dismissed by the Ct. of Appeal. Bkpts. having made default in payment of instalments under the

aggrieved by any act or decision of the trustee" in sect. 39. R. *v.* Hodgins, [1921] 2 W. W. R. 388; 1 C. B. R. 530.—**CAN.**

sp. *Action for goods sold & delivered.*] *Held :* may be brought in the name of the original creditor, notwithstanding that he has made an assignment for the general benefit of his creditors.—KRIENKE *v.* SCHAITEL, [1919] 1 W. W. R. 990.—**CAN.**

PART XXI. SECT. 5, SUB-SECT. 1. C.

h i. —— ——.]—*Held :* bkpt. had no right of action, such right being vested solely in the official assignee.—TIMMINGS *v.* TREASGOLD, [1923] N. Z. L. R. 73. **N.Z.**

PART XXI. SECT. 6, SUB-SECT. 1.

a i. —— *For debt due from one member of bankrupt firm.*]—*Held :* after an authorised assignment no such action could be brought against bkpt. without leave.—*Re* TAYLOR *v.* LEVEY, [1923] 3 D. L. R. 1134, 32 O. L. R. 201; 2 C. B. R. 396. **CAN.**

PART XXI. SECT. 7, SUB-SECT. 1. A.

8237 vii. ..] A trustee to whom an assignment has been made under Bkpcy. Act may, with the permission of the inspectors, under sect. 20 (1), proceed with an action begun by debtor before the assignment, without any leave to proceed, so far as bkpcy. proceedings are concerned. But the trustee cannot proceed with the action in the name of the insolvent, nor in his own name, but only in the official name of the trustee. *Re* BRUNSEN (N.) & Co., LTD., [1921] 49 O. L. R. 71; 59 D. L. R. 610; 19 O. W. N. 41.—**CAN.**

PART XXI. SECT. 8.

n i. —— *Order giving creditor right to bring proceedings—Appeal from.*]—A judge sitting in bkpcy. having granted a petition by resp., under Bkpcy. Act, s. 35, to be authorised to take certain proceedings in the name of the trustee, but at resp.'s own expense & risk, the Ct. of K. B. held it was a mere preparatory judgment & one not subject to the control of that ct.—*Held :* special leave to appeal to the Supreme Ct. of Canada should not be granted. MERCHANTS BANK OF CANADA *v.* ANDREWS (1921), 62 D. L. R. 904; 62 S. C. R. 354. **CAN.**

q i. —— *Land made preferential transactions—Rights of creditors not joining in action.*]—*Held :* creditors attacking transactions, & taking all the risk, cannot be compelled in the event of success to share the fruits of their success with those creditors who declined to share the risk.—*Re* LOVE, [1922], 22 O. L. R. 370, 3 C. B. R. 200.—**CAN.**

r i. —— *To proceed with appeal to Privy Council.*—Where one creditor applied for & obtained an order under Bkpcy. Act, s. 35, allowing him to proceed, in the name of the trustee, but at his own expense & for his own benefit:—*Held :* an appeal to the Privy Council did not lie.—*Re* ANDREW MATTHEWS, OF CANADA, LTD., [1924], 55 D. L. R. 294, 5 C. B. R. 107. **CAN.**

orders, the official receiver as trustee applied for a committal of bkpts. for contempt of ct. under sect. 22 (4) of the Act. It was objected that each application should be supported by affidavit & not by a report of the official receiver:—*Held:* the official receiver's report was sufficient evidence in support of the application in each case, & an order for committal must be made.—*Re* WHALEY, *Ex p.* OFFICIAL RECEIVER, [1921] 2 K. B. 623; 125 L. T. 511; *sub nom. Re* WHALEY, *Ex p.* OFFICIAL RECEIVER, *Re* SCOTT, *Ex p.* OFFICIAL RECEIVER, 90 L. J. K. B. 892; 37 T. L. R. 645; [1921] B. & C. R. 1.

8447. *Add. Annotation:*—**Refd.** Smythe *v.* Wiles, [1921] 2 K. B. 66.

8459. *Add. Annotation:*—**Mentd.** Campbell *v.* Campbell, [1922] P. 187.

8463. *Add. Annotations:*—**Refd.** Edwards *v.* Porter (1924), 11 T. L. R. 57. **Mentd.** Sutherland *v.* Hannevig, [1921] 1 K. B. 336.

8471. *Add. Annotation:* **Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8475. *Add. Annotation:* **Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 100.

8479. *Add. Annotation:* **Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8480. *Add. Annotation:* **Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8484. *Add. Annotation:* **Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8485. *Add. Annotation:* **Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 100.

8486. *Add. Annotation:* **Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 100.

8496a. Evidence of means - Sufficiency of evidence.]—Where a county ct. judge has made an order on a judgment summons for payment of the judgment debt by instalments, & a subsequent application is made for a committal order for non-payment of the instalments, the effective "order or judgment" is the instalment order & not the original judgment, & on the application for a committal order the judge cannot make the order unless he has affirmative evidence of means since the date of the instalment order, & is not entitled to rely on the evidence previously given on the hearing of the application for the instalment order, nor on his disbelief of debtor's evidence denying means, unless there is reasonably direct evidence of means since the date of the instalment order.—NESOM *v.* METCALFE, [1921] 1 K. B. 400; 90 L. J. K. B. 273; 124 L. T. 606; 37 T. L. R. 111, D. C.

8501. *Add. Annotation:*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8506. *Add. Annotation:* — **Mentd.** Freeborn *v.* Leeming (1925), 89 J. P. 179.

8513. *Add. Annotation:*—**Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8521. *Add. Annotation:*—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

8534a. —— Intent to defraud—Burden of proof.]—On the hearing of a charge against bkpt. under 1919 Act, s. 154 (4) (5), proof that deft. has been in possession of property to the value there specified does not throw upon him the burden of showing that he has not concealed or fraudulently removed any part of it after or within six months before the presentation of the petition; but proof that during that period deft. has concelaed or removed a part of his property to that value throws upon him the burden of showing that in doing so he had no intent to defraud.—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SHURE, [1926] 1 K. B. 127; 95 L. J. K. B. 361; 134 L. T. 317; 28 Cox, C. C. 126; [1926] B. & C. R. 1, D. C.

8562. *Add. Annotation:*—**Mentd.** R. *v.* Manchester Local Profiteering Committee, *Ex p.* L. & Y. Ry. 1920), 89 L. J. K. B. 1089.

8571. *Add. Annotation:*—**Mentd.** R. *v.* Manchester Local Profiteering Committee, *Ex p.* L. & Y. Ry. (1920), 89 L. J. K. B. 1089.

8576. *Add. Annotation:*—**Mentd.** R. *v.* Manchester

PART XXII. SECT. 2.

k i.] Fraudulent Debtors Arrest Act, R. S. O., 1914 (c. 83), enacts that before a writ of ca. sa. will be issued, it must be shown that debtor has been guilty of an intent to defraud his creditors. Where debtor had assigned all his property for the benefit of his creditors & then left Ontario & had subsequently returned with the object of settling plff.'s claim & had resided unmolested in Ontario for some time:—*Held:* no fraudulent intent shown. CANADA LUMBER CO. *v.* DAVIDSON, [1923] 4 D. L. R. 594.—CAN.

PART XXII. SECT. 3, SUB-SECT. 1.

8834 iv. — *Prosecution—In what court.*] Upon a motion to quash the orders of a police magistrate on the ground that only a judge in bkpcy had power to act in such a case:—*Held:* since the offence was an indictable offence it ought to be prosecuted & carried on under the Criminal Code like any other offence of a criminal nature, & motion dismissed.—R. *v.* Roy, [1923] 2 D. L. R. 1182; 39 Can. Crim. Cas. 347; 4 C. B. R. 90.—CAN.

i i. ——— .]—To justify a committal of a judgment debtor under Arrest & Imprisonment for Debt Act for concealing or making away with his property "in order to defeat, delay or defraud his creditors or any of them," a fraudulent intent must be shown. Neither due & reasonable appropriation of property or income to the maintenance & health of himself & his family, according to circumstances, nor, of themselves, improvidence or "great carelessness" in expenditure, import a fraudulent intent. Continuous wilful & extravagant squandering of debtor's income in self-indulgence might be carried to such a degree as would manifest a fraudulent intention to contravene the statute.—CUTLER *v.* CHIPPEY, [1921] 1 W. W. R. 686.—CAN.

i ii. ——— .]—Affidavits used on an application for a writ of attachment under Absconding Debtors Act, R. S. S., 1920 (c. 58), s. 3, alleging that defts. were "badly involved" & "financially embarrassed," setting out a newspaper advertisement by defts. of certain chattels for sale & giving deponents' opinions from their "experience" in dealing with defts. that they were attempting to sell with intent to defraud creditors:—*Held:* insufficient to justify granting the application.—CANADIAN BANK OF COMMERCE *v.* KENZIE, [1923] 2 W. W. R. 993.—CAN.

i iii. ——— .]—*Held:* the affidavit of plff. stating merely that he had good reason to believe & did verily believe that deft. "has assigned, transferred & disposed of his personal property & effects by a bill of sale with intent & design to defraud his creditors" was insufficient. The affidavit must show "such facts & circumstances as form the grounds of such beliefs," as required by the K. B. Div. Rules.—DOW *v.* DAYMENT, [1923] 1 D. L. R. 772; 32 Man. L. R. 402; [1922] 3 W. W. R. 1119.—CAN.

c i. —— *Giving undue preference.*]—A., convicted of a contravention of Insolvency Act, 32 of 1916, s. 139 (3), had shortly before he surrendered his estate made payments to two creditors, & there was no proof to rebut the inference that he intended to prefer these creditors:—*Held:* the conviction should be sustained.—R. *v.* ISMAIL (1920), App. D. 316.—S. AF.

PART XXII. SECT. 3, SUB-SECT. 2.

8544 ii. —— *Insolvency Act, 32 of 1916, s. 136 (3).*]—The offence created by this sect. consists in the disposal by insolvent otherwise than in the ordinary course of business of property which he has obtained on credit, & the jury should be directed to confine their attention to the mode of disposal of the property purchased on credit.—R. *v.* ABRAHAMSON (1920), App. D. 283.—S. AF.

PART XXII. SECT. 3, SUB-SECT. 3.

8555 ii. ——.]—PARIS *v.* R. (1919), 40 N. L. R. 338.—S. AF.

Local Profiteering Committee, *Ex p.* L. & Y. Ry. (1920), 89 L. J. K. B. 1089.

8583. *Add. Annotation* :—**Mentd.** R. *v.* Pickering (1921), 15 Cr. App. Rep. 175.

8587a. —— **Obligation to disclose bankruptcy absolute.**]—The obligation imposed by 1914 Act, s. 155 (*a*), on an undischarged bkpt. to disclose his position to the person from whom he seeks credit is absolute. It is no defence that he took steps to have such information conveyed or that he had reasonable grounds to believe that it has been conveyed, if in fact it had not.—R. *v.* LEINSTER (DUKE), [1924] 1 K. B. 311; 93 L. J. K. B. 141; 130 L. T. 318; 87 J. P. 191; 40 T. L. R. 33; 68 Sol. Jo. 211; 27 Cox, C. C. 574; 17 Cr. App. Rep. 176; [1924] B. & C. R. 78, C. C. A.

8633a. **Bankrupt guilty of gambling · Severity of sentence.**]—R. *v.* BREWIN (1926), 19 Cr. App. Rep. 151, C. C. A.

Part XXIII.—Compositions and Schemes and Deeds of Arrangement.

8645. *Add. Annotations* :—**Apld.** *Re* Ellis, [1925] Ch. 564. **Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52. **Mentd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200; *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

8645a. —— **To entertain claim to enforce right adverse to deed—Creditor not entitled to benefit of deed.**]—In 1922 applt. entered into the employment of debtor as manageress of his business, & as a condition of such employment she lent him a sum of £500 for the repayment of which he gave her a charge on his share & interest in his business. In 1924 debtor executed a deed of arrangement for the benefit of his creditors generally. The deed was expressed to be made between debtor of the first, the trustee of the second part, three named creditors of the third part, & "the several persons, companies, & partnership firms, being creditors of debtor, whose names & seals are set out & affixed to the schedule hereto, or who shall otherwise in writing assent to these presents, hereinafter called 'the creditors'" of the fourth part. Applt., who refused to consent to the deed, applied under the above sect. for a declaration that she was entitled as against the trustee of the deed to a charge on all the share & interest, with the exception of chattels, of debtor in his business, & for an order that the trustee should hand over & execute such documents as might be necessary for the purpose of transferring the share & interest to applt. The registrar in bkpcy. dismissed the application on the ground that he had no jurisdiction under the sect. to entertain it. On appeal: *Held*: (1) the object of the sect. was to provide a trustee or *cestui que trust* under a deed of arrangement with a summary means of obtaining a determination of questions arising in the administration of the trusts of the deed similar to that provided by originating summons in the Ch. Div. under R. S. C. Ord. 55, r. 3; (2) applt. was not a creditor entitled to the benefit of the deed; creditors so entitled were those defined as such by the deed, & applt., not having assented to the deed, did not come within that category; (3) applt.'s claim was not for the enforcement of the trusts or the determination of any questions arising under the deed within the above sect., but was a claim to enforce a right adverse & paramount to the deed. *Re* ELLIS, [1925] Ch. 564; 41 T. L. R. 474; *sub nom. Re* ELLIS, *Ex p.* MYTTENAERE, 94 L. J. Ch. 239; [1925] B. & C. R. 81; *sub nom. Re* A DEED OF ARRANGEMENT (No. 9 of 1924), 133 L. T. 306, C. A.

8665. *Add. Annotation* : **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 911.

PART XXII. SECT. 3, SUB-SECT. 6.

st. *Procedure for commencing & carrying on prosecution.*]—Where bkpt. is charged with indictable offences under Bkpcy. Act, s. 89, & orders to prosecute are made under sect. 93, the prosecution must be commenced & carried on under Criminal Code, & a justice of the peace or police magistrate has jurisdiction to receive the information, hold the preliminary investigation & commit for trial. Upon a committal if the judge who made the order presides at the trial, he acts not as a judge in bkpcy., but as a judge of the Supreme Ct.—R. (EMERY) *v.* ROY, [1923] 2 W. W. R. 400.—**CAN.**

PART XXIII. SECT. 3, SUB-SECT. 1.

sw. *Meeting duly summoned not held —Meeting held on following day—No proper adjournment of first meeting.*]—*Held*: the meeting was irregular & all business done void, because the first proposed meeting was not adjourned according to the rules.—*Re* WHOLESALE GROCERS, LTD., [1923] 2 D. L. R. 491; 3 C. B. R. 650.—**CAN.**

PART XXIII. SECT. 3, SUB-SECT. 2.

8677 ii. —— —— —— *Proxy for company.*]—A proxy need not be under the co.'s seal, unless expressly required by the Act of incorporation, or by the articles of assocn.; if it is so required the burden of establishing its necessity is on the person alleging it.

A proxy which purports to be signed by the co., under which is subscribed the name of the person who affixes the signature of the co. & who so describes himself that the chairman can conclude he is an officer or employee of the co., is *prima facie* evidence of authority, & the chairman should receive it & permit the person named therein to vote. *Re* MCCOURBEY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587. **CAN.**

8682 i. —— *In respect of what debts —Unliquidated damages.*]—Where there is a claim for unliquidated damages, they must be assessed before the claimant can have any right to vote.—*Re* ANDREW MOTHERWELL ESTATE, [1923] 4 D. L. R. 956; *affd.* 25 O. W. N. 359.—**CAN.**

8684 iv. ——.]—Since Bkpcy. Act, 1921 (c. 17), s. 12, Bkpcy. Act, 1919 (c. 36), s. 13 (3) must be construed as meaning that in the calculation of proved debts, the two-thirds in value may be composed partly of debts less than $25, but "as regards voting, creditors whose claims are less than $25 are to be excluded. Under Bkpcy. Act, 1919, s. 42, no one whose claim is for less than $25 may vote. *Re* BLUE AND FASHION SHOPS, LTD., [1921] 59 D. L. R. 519. **CAN.**

sa. *Appeal from decision of chairman —Rights of creditor who has not filed proof at time of meeting.*]—A creditor is entitled to exercise his rights provided he has duly proven his claim in accordance with Bkpcy. Act & Rules prior to the hearing of the appeal. The ct. may adjourn the hearing of the appeal to permit of such proof, provided that the creditor has not delayed unreasonably in making it.—*Re* MCCOURBEY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

sb. —— *On technical grounds —Necessity to raise question before decision given—Discretion of court.*]—*Re* MCCOURBEY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

sc. —— *Application by creditor to be added or substituted as appellant.*]

8768. *Add. Annotations:*—**Refd.** *Re* Ellis, [1925] Ch. 564; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52. **Mentd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200; *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

8771a. Unstamped deed—Admissibility in evidence—To prove non-registration.]—*Re* SHAW, *Ex p.* OFFICIAL RECEIVER, No. 434a, *ante.*

8778a. —— ——.]—In 1904 debtor who was heavily indebted, & against whom bkpcy. proceedings were pending, signed an instrument under which a trustee was to receive the whole of debtor's income &, after making certain deductions, to distribute the balance among the creditors, & in consideration of the arrangement the creditors agreed that all proceedings in bkpcy. or otherwise were to be stayed & to accept payment of their debts by instalments & to release debtor from all claims or demands in respect of their debts. The instrument provided that no document executed by debtor should be registered under the above Act. A number of the then creditors including appct. assented to the instrument, which was never registered under the Act. The arrangement was carried out until the death of debtor, which occurred in Nov. 1918, appct. receiving *pro rata* amounts on his debt between Aug. 1905 & July 1917. The debt carried interest at 4 per cent. & the payments under the arrangement to appct. were not sufficient to cover the interest so that an amount exceeding the original debt was still owing to appct. In Feb. 1919, an administration order under 1911 Act, s. 130, was made upon a creditor's petition for the administration of deceased debtor's estate as being a person who had died insolvent, & the estate was being administered by the official receiver. At the time of debtor's death there was in the hands of the trustee under the instrument a sum of £165 8*s.* 3*d.* which the official receiver claimed on the ground that it formed part of the general estate of debtor, & the trustee paid the amount to him upon the terms that the official receiver was to be in the same position as he would have been if the money had remained in the trustee's hands. On a motion by appct. for a declaration that the £165 8*s.* 3*d.* was held by the trustee on behalf of the assenting creditors, including appct., was divisible amongst them, & that appct. was entitled to prove in the administration of the estate for the balance due to him from debtor after giving credit for all sums received or receivable under the arrangement:

Held: (1) the instrument was a deed of arrangement within 1887 Act, s. 4 (2), upon the ground that it was an assignment of property by debtor for the benefit of his creditors generally & also upon the ground that it was an agreement for a composition; (2) not having been registered it was void under sect. 5 of the Act; (3) as the instrument was void it created no trust for the benefit of the creditors, & the trustee under the instrument held the £465 8*s.* 3*d.* to the use of the official receiver as the representative of debtor, & was bound to repay it to him; (4) as the only direction to apply the money received by the trustee was contained in the void instrument & all parties knew & acted upon the assumption that it was invalid, deceased debtor would not have been, nor was the official receiver as his representative, estopped from setting up its invalidity & claiming from the trustee any money still in his hands; (5) equally there was no estoppel which prevented appct. from setting up the invalidity of the instrument & proving in the administration for the balance due to him from debtor; (6) as the instrument was void the release of the debts it contained was of no effect; (7) as under the instrument there was only a provision for payment to the creditors of debtor's income so long as he lived, no promise to pay the balance of the debts could be implied from the payments which had been made so as to take the debts out of the operation of the statutes of limitation, & appct.'s right to prove in the administration for the balance due to him was therefore barred.—*Re* LEE. *Ex p.* GRUNWALDT, [1920] 2 K. B. 200; 89 L. J. K. B. 364; 123 L. T. 31; [1919] B. & C. R. 287.

Annotations:—*As to* (3), (4), (5) & (6) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8781. *Add. Annotation:*—**Mentd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

8782a. — — Assignment of property to trustees for benefit of creditors—Assignment not to be registered.] *Re* A BANKRUPTCY NOTICE, No. 797a, *ante.*

8782b. — — Authority to realise trader's estate & to apply proceeds in payment of creditors.]—A letter signed by debtor in the following form: "I hereby authorise you to realise my estate including stock-in-trade, book debts, furniture, & all other assets & to apply the proceeds first in payment of the costs, charges, & preferential claims, etc., & secondly to pay the balance to my creditors *pro rata*": *Held:* (1) not an "assignment of property" within sect. 1 (2) (*a*) of the above Act; (2) not a deed of arrangement within sub-sect. 1.—LIPTON (B.), LTD. *v.* BELL, [1924] 1 K. B. 701; 40 T. L. R. 163; *sub nom.* LIPTON (B.), LTD. *v.* BELL, HAYES *v.* BELL, 93 L. J. K. B. 563; 130 L. T. 749; 68 Sol. Jo. 521; [1924] B. & C. R. 82, C. A.

8782c. — — Document discharging debtor—Constituting assignment for benefit of creditors

Not allowed, since the latter creditor had a right of appeal, & the rights of the creditor applying to be added would not be affected by the non-joinder or non-substitution. *Re* MCVICAR, *Re* STRATTON & GREENSMITH, LTD., [1924] 4 D. L. R. 1227, [1924] 3 W. W. R. 387. **CAN.**

PART XXIII. SECT. 5. SUB-SECT. 1.

sd. *Effect of.*]—A composition or scheme of arrangement, though approved by the ct. & by statute binding on all the creditors, is at bottom only a contract between the parties. Creditors' rights are only suspended during the composition period. There is no obligation, legal or moral, which can debar the composition creditors, if the composition has been annulled, from claiming to rank on the assets of the estate *pari passu* with the creditors whose claims have arisen since the composition.—*Re* LUSSON, [1924] 3 D. L. R. 761; 55 O. L. R. 215; 24 O. W. N. 382.—**CAN.**

sf. *Collateral assignment by partner on behalf of firm—No authority by other partner.*]—*Held:* invalid.—*Re* SQUIRES BROTHERS, [1922] 3 W. W. R. 130; 68 D. L. R. 571.—**CAN.**

PART XXIII. SECT. 5, SUB-SECT. 2.—A.

sk. *Under Bankruptcy Act—Deed of assignment.*]—The title of an assignee is not complete as against third persons until registration.—TOWERS *v.* SOLOMON, [1922] 1 W. W. R. 1077; 2 C. B. R. 579.—**CAN.**

generally.]—Pltf.'s claim was for £148, the amount of two bills of exchange drawn by pltf., accepted by deft. & dishonoured on presentation. Deft. pleaded in his defence that the cause of action was merged in a deed of arrangement executed by him in favour of creditors. By that document the consenting creditors of deft. accepted the following terms for the settlement of all debts owing by deft. to them: "(1) all the goods which have been removed from M.'s office & given to M. & Co., in trust on behalf of creditors, should be handed over to the creditors . . . (2) M. undertakes to pay to the above trustee for the creditors £80 payable . . . (3) M. also undertakes to pay on his own account (certain creditors named therein) who shall be excluded from the list of the general creditors. I agree to these terms":—*Held:* the agreement was for the benefit of three or more creditors, made by a debtor who was at the date of the execution of the deed insolvent, & was a deed of arrangement within sect. 1 of the above Act, & was void owing to non-registration.—LANDSBERG *v.* MENDEL, [1924] W. N. 46.

8782d. —— **Deed of arrangement made by insolvent debtor.**]—A debtor, who was insolvent, under a scheme for the composition of his debts, which amounted to about £150,000, entered into a deed of arrangement with his creditors under which he agreed to pay his trade creditors, including pltfs., a composition of their claim, together with certain profits out of his business up to Apr. 30, 1926, & he covenanted to carry on that business up to that date, the creditors covenanting to release him from the full amount of his liability. Some of his creditors, whose claims amounted to £150 were not parties to the scheme or deed, &, acting under legal advice, debtor did not register the deed. After paying his trade creditors, *including pltfs., a small portion of the composition, debtor sold his business* & entered into another scheme of arrangement with his creditors, to which pltfs. refused to be parties, & they sued for the original debt owing to them, less the amount which they had received under the composition:—*Held:* (1) the deed came within Deeds of Arrangement Act, 1914 (c. 47), s. 1 (1) (b), &, not being registered, was void; (2) pltfs., who had assented to the deed, were not estopped by such assent from denying the validity of the deed; (3) assuming that they were so estopped, debtor, by selling his business before Apr. 30, 1926, had not fulfilled the conditions of the deed under which he would be released from his original liability, & therefore pltfs. were relegated to their original rights & were entitled to succeed on their claim. The authorities on the doctrine of estopped as applicable to deeds of arrangement considered. — HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD (1925), 134 L. T. 82; 42 T. L. R. 52.

8787. *Add. Annotations:* **Refd.** *Re* Ellis, [1925] Ch. 561; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52. **Mentd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200; *Re* A Bankruptcy Notice, [1921] 2 Ch. 76.

8788. *Add. Annotations:* **Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82. **Mentd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200.

8789. *Add. Annotation:* **Refd.** *Re* A Bankruptcy Notice, [1921] 2 Ch. 76.

8872. *Add. Annotation:* **Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

8882a. — —] FLOWER *v.* LYME REGIS CORPN., No. 1775a, *ante*.

8923. *Add. Annotation:* **Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

PART XXIII. SECT. 5, SUB-SECT. 2. B.

81. *Necessity for.*] —An assignment under Bkpcy. Act must be accepted for registration though not accompanied by the affidavit provided for by Homesteads Act, 1920, s. 7, & by Assignment Act, s. 7a. *Re* LAND TITLES ACT, *Re* CITY GARAGE & MACHINE CO., LTD., [1921] 1 W. W. R. 371; 59 D. L. R. 416; 1 C. B. R. 412.—**CAN.**

PART XXIII. SECT. 6, SUB-SECT. 1. A.

[illegible]. — — — *Non-assenting creditors not opposing.*]—*Re* HOWE, [1921] 20 O. W. N. 214; 59 D. L. R. 457; 1 C. B. R. 452.—**CAN.**

8810 l. — — *Reasonable security provided.*]—In a composition scheme, if one of the creditors obtains an advantage over the others the ct. will scrutinise the scheme very closely. Where under a scheme all the creditors would receive more than 50 per cent. & it was reasonable & provided for immediate payment of all but one of the creditors, but the creditor who financed the scheme would be entitled to be paid in full, the ct. ratified the composition as the most advantageous that could be proposed.—*Re* GARDNER, *Ex p.* CROFT & SONS, LTD., [1921] 19 O. W. N. 25; 59 D. L. R. 555; 1 C. B. R. 424.—**CAN.**

8811 l. *Whether bound to refuse to approve—Fraudulent conduct.*]—The ct. will approve of a compromise between debtor & his creditors which is in the best interests of the creditors, even where debtor has obtained credit by false & fraudulent representations, where debtor by his discharge is not relieved from liability for the full claim of a creditor from whom he obtained credit by false & fraudulent representations, & he is still liable to prosecution. *Re* CHMELNITSKY, [1922] 3 W. W. R. 111; 68 D. L. R. 192. **CAN.**

PART XXIII. SECT. 6, SUB-SECT. 2.

8843 iv. — —] In special circumstances under Bkpcy. Rule, 68 (2), the ct. may set aside a composition, although it has been ratified, & may order bkpt. to make another which will provide greater security for the creditors. But where a composition has been ratified, & is a reasonable & fair attempt to pay creditors as much as possible, there can be no grounds for setting it aside. — BRUNSDALE *v.* HOPE & HART (1922), 67 D. L. R. 628, 24 Q. P. R. 120. **CAN.**

8m. *Absence of information & undervaluation.*] *Held:* the proposal was not "reasonable & proper." — *Re* GASTON, [1922] 2 I. R. 179. —**IR.**

PART XXIII. SECT. 6, SUB-SECT. 6.

8865 l. — *Enhanced value of assets.*]—An offer of a composition was passed by the requisite majority of creditors, & confirmed by the ct. Later, the property was sold for a price which considerably increased the assets. An opposing creditor then applied for an order setting aside the arrangement: *Held:* a composition passed by the requisite majority of creditors & confirmed by the ct. cannot be upset except for fraud. *Re* Q., AN ARRANGING DEBTOR, [1925] 2 I. R. 99. **IR.**

PART XXIII. SECT. 8, SUB-SECT. 3. A.

k [illegible] *Re* Canada Bill Co., *Ex p.* WEAVER, [1925] 2 D. L. R. 997, 3 C. B. R. 622. **CAN.**

8n. *Judgment.*] Under an assignment in trust for the benefit of creditors of all the assignor's property the assignee is entitled to an assignment of a bond which a purchaser made on an agreement of sale with the assignor has entered into to protect the assignee against his (the purchaser's) default under the agreement, &, if before such assignment of the bond the assignor has obtained judgment on it, the trustee has a right to an assignment of the judgment. *Re* HIRSCH *v.* ALLEN INTERIOR TRUST CO. *v.* MACKENZIE, [1924] 4 D. L. R. 695; [1924] 1 W. W. R. 420; 14 Man. L. R. 630, 34 C. B. R. 51. **CAN.**

PART XXIII. SECT. 8, SUB-SECT. 3. B.

8948 ii. — —] Payment into ct. under a garnishee summons, under Alberta practice, is not payment to the garnishing creditor under Bkpcy. Act, s. 11 (1), so as to prevent a subsequent authorised assignment taking precedence over the garnishment. WESTERN CANADA FLOUR MILLS CO., LTD. *v.* WHITE BAKERY, [1921] 1 W. W. R. 828; 59 D. L. R. 621; 1 C. B. R. 390. **CAN.**

9023. *Add. Annotation :*—**Mentd.** Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.

9029. *Add. Annotation :*—**Mentd.** Sun Bldg. Soc. v. Western Suburban Bldg. Soc., [1921] 2 Ch. 83.

9032a. - ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante*.

9074. *Add. Annotation :*—**Refd.** Goldfarb *v.* Bartlett & Kremer, [1920] 1 K. B. 639.

9094. *Add. Annotation :*—**Refd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200.

9109a. — - - - ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante*.

9198a. - - - - ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante*.

9198b. - - - - - —.] HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD, No. 8782d, *ante*.

Compare No. 797a, *ante*, & original volume, p. 160, No. 1498.

9229a. —— ——.]—HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD, No. 8782d, *ante*

9276. *Add. Annotation :*—**Mentd.** Camillo Tano S.S. Co. *v.* Alexandria Engineering Works (1921), 38 T. L. R. 134.

9311a. **Right to take proceedings under 1914 (Deeds) Act, s. 23—Claim to enforce right adverse to deed.**]—*Re* ELLIS, No. 8645a, *ante*.

9486. *Add. Annotation :*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

9543. *Add. Annotations :*—**Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765. **Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515; *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22.

PART XXIII. SECT. 9, SUB-SECT. 1. C.

so. *To fix date of creditors' meeting.*] When an authorised trustee takes over the estate of bkpt. as though he were sequestrator, he has authority to fix the date of the creditors' meeting & may change the date where it is impossible to give proper notice, & any meeting held on a date not so finally fixed by the trustee is illegal. [LEMAIRE & LESSON *v.* DE LISLE (1922), 66 D. L. R. 261.—CAN.

sp. *To apply to court for approval of composition arrangement.*] *Re* SHAW (1920), 59 D. L. R. 619; 14 C. B. R. 365.—CAN.

st. *To direction.*] A trustee has the right to apply to the court for directions in connection with the administration of the estate, but is not entitled, prior to an authorised assignment or receiving order, to bring into ct. persons who may be entitled to certain assets, in order to determine their legal rights.—*Re* GELLER BROTHERS, [1924] 2 D. L. R. 590; 54 O. L. R. 283; 4 C. B. R. 108.—CAN.

sw. *To attack chattel mortgage—For non-compliance with Chattel Mortgage Act.*] An authorised assignee or trustee in bkpcy. can maintain an action to set aside a transaction for want of compliance with the provisions of Bills of Sale & Chattel Mtge. Act, even although the transaction was complete before Bkpcy. Act came into force.—HOLDING *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1921] 2 W. W. R. 899; 14 Sask. L. R. 356.—CAN.

sx. —— ——.]—*Re* HAMER, *Ex p.* ROYAL BANK OF CANADA, [1922] 1 W. W. R. 1241; 66 D. L. R. 800; 16 Sask. L. R. 165.—CAN.

PART XXIII. SECT. 10, SUB-SECT 2. —C (a).

s (p. 1133) i. - - - - *As regards priority of subsequent creditors.*]—*Re* THOMAS [1925] 4 D. L. R. 242.—CAN.

PART XXIII. SECT. 12, SUB-SECT. 1.

9612 iii. ——.]—Where conveyance made by the assignee for the benefit of creditors to pltfs. were made & accepted in satisfaction of pltfs.' claim against debtor :—*Held :* deft. was thereby freed from liability as surety.—UNION BANK OF CANADA *v.* MARKEPEACE (1919), 44 O. L. R. 202; 15 O. W. N. 179; 46 D. L. R. 193.—CAN.

BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

Part I.—In General.

10. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640. **Mentd.** McDonald *v.* Nash, [1924] A. C. 625.

13. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640 ; Sutters *v.* Briggs, [1922] 1 A. C. 1. **Mentd.** *Re* Farrow's Bank, [1923] 1 Ch. 41.

14. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley, [1926] Ch. 38.

14a. —— —— ——.]—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented :— *Held :* the cheque not having been paid, there was no valid & effectual gift of the money to the donee.—*Re* Swinburne, Sutton *v.* Featherley, [1926] 1 Ch. 38 ; 95 L. J. Ch. 104 ; 134 L. T. 121 ; 70 Sol. Jo. 64, C. A.

15. *Add. Annotation :*—**Mentd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

22. *Add. Annotation :*—**Mentd.** Scott *v.* Barclays Bank, [1923] 2 K. B. 1.

23. *Add. Annotations :*—**Mentd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593 ; McDonald *v.* Nash, [1924] A. C. 625.

28. *Add. Annotation :*—**Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110

37. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625 ; Ouellette *v.* Canadian Pacific Ry., [1925] A. C. 569. **Mentd.** Despatie *v.* Tremblay, [1921] 1 A. C. 702 ; Samuel *v.* Dumas, [1921] A. C. 131.

Part II.—Requirements of Form.

81. *Add. Annotation :*—**Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67.

82. *Add. Annotations :*—**Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Mentd.** Brown *v.* Swan (1921), 37 T. L. R. 787 ; Sutters *v.* s, [1922] 1 A. C. 1 ; *Re* Farrow's Bank, [1923] 1 Ch. 41 ; Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

95. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

161. *Add. Annotations :*—**Mentd.** *Re* Chesterman's Trusts, Mott *v.* Browning, [1923] 2 Ch. 466 ; Uliendahl *v.* Pankhurst Wright (1923), 39 T. L. R. 628 ; Peyrae *v.* Wilkinson, [1921] 2 K. B. 166.

191. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

205. *Add. Annotations :*—**Mentd.** Despatie *v.* Tremblay, [1921] 1 A. C. 702 ; McDonald *v.* Nash, [1924] A. C. 625 ; Samuel *v.* Dumas, [1924] A. C. 431 ; Ouellette *v.* Canadian Pacific Ry., [1925] A. C. 569.

208. *Add. Annotation :*—**Apld.** Goldman *v.* Cox (1924), 40 T. L. R. 744.

208a. —— —— —— ——.]—Pltf., who was a Polo, could not read English unless it was printed, s from one A. Cohen, & certain s made out in favour of "A. n" by a clerk in the employment of pltf. & were signed by pltf. The clerk afterwards forged the name of the payee by "A. Cohen" & forged e indorsement & got the cheques cashed by

PART I. SECT. 1.

14 i. —— *Revocable mandate—Revoked by death.*]—The authority of a bank to pay a cheque ceases on notice of the drawer's death.—Curley *v.* Briggs (Administrator of Estate), [1920] 2 W. W. R. 53 D. L. R. 351.—CAN.

14 ii. *S. P.* Kendrick *v.* Dominion Bank & Bowsas (1920), 47 O. L. R. 372 ; 18 O. W. N. 138.—CAN.

PART II. SECT. 1, SUB-SECT. 1.

a
a married woman :—
note was in fact, as well
in form, a valid unconditional
e on the part of the maker to
a sum certain in money. Effect
of Married Women's Property Act,
R. S. O., 1914 (c. 149), ss. 4 (2), 5 (2),
—Anderson *v.*
L. L. R. 1076 ; 56 O. L. R.
-CAN.

r i. —— .] An instrument is
not a nego note who re-
there is not an unconditional
as required by
s. 176. *Re* Mitchell & Union Bank of Canada, [1923] 4 D. L. R. 1132 ; 52 O. L. R. 523, *revsg. sub nom. Re* Stevens & Mitchell, 21 O. W. N. 331.—CAN.

drawn & given under the condition that it was not to become unless a loan was granted by bank : *Held :* the cheque could not be detached from the condition.

not be recovered
& Norman (19
65 D. L. R.

PART II. SECT. 1, SUB-SECT. 2

b i. *maker*
on
writing said
genuine, but the judge i. after re

enlargements of
by pltf.
of
in
that
any
the
done
the note
ements
B. C. R.
CAN.

PART II. SECT. 1, SUB-SECT. 3.

sb. "*Sixty days after sight*". Sum
terest for indefinite p
document was not
Rosenstain & Co. *v.*
Commonwealth Bank of Australia, [1922] V. L. R. 747 ; 31 C. L. R. 46.
AUS.

PART II. SECT. 1, SUB-SECT. 4.

k (p. 25) i. —— ——
certain time.]
not a bill of
s on
v. Common-
wealth
V. L. R. 787 ; 31 C. L.
AUS.

deft., who obtained payment for the cheques on presentation. In an action for money received by deft. to the use of pltf. :—*Held :* as the cheques were, before signature, made out to a real creditor & not to a fictitious person pltf. was entitled to recover.—GOLDMAN v. COX (1924), 40 T. L. R. 744 ; 69 Sol. Jo. 10, C. A.

215. *Add. Annotations :* **Refd.** Robinson v. Marsh, [1921] 2 K. B. 640 ; McDonald v. Nash, [1924] A. C. 625.

241. *Add. Annotations :* **Consd.** London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67. **Mentd.** Brown v. Swan (1921), 37 T. L. R. 787 ; Sutters v. Briggs, [1922] 1 A. C. 1 ; *Re* Farrow's Bank, [1923] 1 Ch. 41 ; Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

242. *Add. Annotation :*—**Mentd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

275. *Add. Annotation :* **Mentd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

292. *Add. Annotation :* **Mentd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

Part III.—Classification of Instruments.

341. *Add. Annotations :* **Refd.** Sutters v. [1922] 1 A. C. 1. **Mentd.** The Joannis Vatis (1921), 91 L. J. P. 182.

347. *Add. Annotation :*—**Mentd.** McDonald v. Nash, [1924] A. C. 625.

363. *Add. Annotation :* **Mentd.** Jones v. Waring & Gillow, [1926] A. C. 670.

Part IV.—Date of Instrument.

383. *Add. Annotation :*—**Mentd.** Maskell v. Hill, [1921] 3 K. B. 157.

Part V.—Computation of Time of Payment.

422. *Add. Annotation :* **Mentd.** Joachimson v. Swiss Bank Corpn., [1921] 3 K. B. 110.

441a. [illegible] Where a promissory note, repayable by instalments, provides that if any instalment should not be paid "punctually" the whole of the balance is immediately to become payable, the use of the word "punctually" does not deprive the maker of the note of the three days of grace allowed by 1882 Act, s. 14, "in every case where the bill itself does not otherwise provide."—SCHAVERIEN v. MORRIS (1921), 37 T. L. R. 366.

Part VI.—Acceptance.

468. *Add. Annotations :* **Refd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593 ; McDonald v. Nash, [1924] A. C. 625.

490. *Add. Annotation :*—**Mentd.** McDonald v. Nash, [1924] A. C. 625.

Part VII.—Inchoate Instruments.

555. *Add.* [illegible] **Consd.** McDonald v. Nash, [1924] A. C. 625. **Refd.** Lickbarrow v. Mason (1793), 6 East, 20, n.

565. *Add. Annotations :*—**Consd.** McDonald v. [illegible]

567a. [illegible]—*Re* GOOCH, *Ex p.* JUDD, No. 2096a.

PART VI. SECT. 2.

on [illegible] v. EXCHANGE BANK OF CANADA, [1923] 3 D. L. R. 1103, 39 O. L. R. 138. CAN.

PART VI. SECT. 3. SUB-SECT. 1.

when a[illegible] to bill on dem[illegible] will & no further was necessary.—RUMPRIEVS v. TAYLOR, [1921] N. Z. L. R. 343. N.Z.

PART VII. SECT. 1.

vi. — *of place of payment.*] — of handing over a note, [illegible] the applt.'s solr. filled in a place for payment, & discounted it with resp. & kept the money, & resp. filled in his own name as payee, & the note was not paid at maturity & no notice of [illegible] was given to applt. :—*Held :* the [illegible] had no authority to negotiate the [illegible] & resp. had no authority to fill in his name as payee, & he could not recover from applt.—KNIGHT v. ABBOT, [1923] N. Z. L. R. 1072.—N.Z.

567b. ——.]—McDonald (Gerald) & Co. v. Nash & Co., No. 2096b, *post*.

577a. —— ——.]—Where a bill of exchange on duly stamped paper is presented for signature to the acceptor by the drawer, & the former signs at the request of the latter with knowledge that the drawer intends to convert the document into a bill of exchange & negotiate it as such, it is immaterial, as against a holder in due course, whether the document was in blank or fully filled in when presented to the drawer for signature.—Dunn (M.), Ltd. v. Jefferson (1925), 69 Sol. Jo. 695, 725.

587. *Add. Annotation :*—**Dbtd.** Jones v. Waring & Gillow, [1926] A. C. 670.

Part VIII.—Delivery.

595. *Add. Annotation :*—**Refd.** McDonald v. Nash, [1924] A. C. 625.

639. *Add. Annotations :*—**Mentd.** *Re* Chesterman's Trusts, Mott v. Browning, [1923] 2 Ch. 466; Uliendahl v. Pankhurst Wright (1923), 39 T. L. R. 628; Peyrac v. Wilkinson, [1924] 2 K. B. 166.

643. *Add. Annotation :* **Expld & Distd.** Jones v. Waring & Gillow, [1926] A. C. 670.

663. *Add. Annotation :* **Mentd.** Saunders v. Young's Brewery (1925), 42 T. L. R. 136.

Part IX.—Capacity and Authority of Parties.

687. *Add. Annotation :*—**Refd.** Kreditbank Cassel G.m.b.H. v. Schenkers, [1926] 2 K. B. 150.

692. *Add. Annotation :*—**Mentd.** Rye v. Purcell, [1926] 1 K. B. 446.

715. *Add. Annotation :* **Mentd.** Brocklebank v. R., [1925] 1 K. B. 52.

722. *Add. Annotation :*—**Refd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

734. *Add. Annotations :*—**Distd.** Goldman v. Cox (1924), 40 T. L. R. 744. **Refd.** Jones v. Waring & Gillow, [1926] A. C. 670.

737. *Add. Annotation :* **Refd.** Jones v. Waring & Gillow, [1926] A. C. 670.

738. *Add. Annotation :* **Mentd.** London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.

746. *Add. Annotations :*—**Consd.** Goldman v. Cox (1924), 40 T. L. R. 423. **Refd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Australian Bank of Commerce v. Perel, [1926] A. C. 737; Jones v. Waring & Gillow, [1926] A. C. 670.

755. *Add. Annotation :* **Consd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

757. *Add. Annotation :* **Refd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

763a. — — **"Directors" added after signatures. Acceptance by company. Drawer requiring indorsement by directors.**]—A bill of exchange addressed to a limited co. was accepted in the following form: "Accepted payable at the W. Bank, A.B. & C.D., directors Fashions Fair Exhibition, Ltd." The drawer when sending the bill to the co. for acceptance stated in his letter that as a condition of his doing the work for which the bill was drawn he should require it to be indorsed by the directors as well as accepted by the co. Accordingly the same two directors signed the bill also on the back.

PART VIII. SECT. 4, SUB-SECT. 1. A.

611 viii. ——.]—Oral evidence is not admissible to show an agreement contemporaneous with the making of a [illegible] that the liability of the maker is contingent on the happening of some event.—Ruthenian Farmers Elevator Co. v. Gn[illegible] W. W. R. 19; 68 D. [illegible] Man. L. R. 322.—CAN.

628 i. —— *Und[illegible]* Bonham v. Bonham (1920), 48 O. L. R. 434; 57 D. L. R. 459; 19 O. W. N. 268.—CAN.

637 iv. ——.]—Evidence of alleged conditions attached to the payment of a promissory note, *e.g.* payment out of a particular fund, is not admissible, as it would vary the terms of the wr[illegible] v. Weber, [illegible] D. L. R. 335; 1 W. W. R. 137; 18 Sask. L. R. 6.—CAN.

i. *Excluding liability if* [illegible].]—An action by [illegible]ker of a promissory note for the price of goods was dismissed, on the ground that deft. had exercised, under a contem[illegible]ment he was entitled to do, [illegible]t of rejecting & returning [illegible]s.—National Manufacturers Co. v. Stepa, [1922] 1 W. W. R. 811; 65 D. L. R. 284, 17 Alta. L. R. 395.—CAN.

PART IX. SECT. 2.

4 (p. 961) i. ——.]—Pope v. Fraser, [1923] 3 W. W. R. 754.—CAN.

PART IX. SECT. 5.

763 v a. — — — — *"President" & "...." added after signatures.*]—*Held* [illegible] the note. [illegible] v. Ruth[illegible]nian Farmers' [illegible] Co., Ltd., [1922] 2 W. W. R. 535; 32 Man. L. R. 137.—CAN.

v b. — — — — *"Pres."* [illegible] & the intent must be gather[illegible] the face of the document & where, on a series of [illegible] the same person at [illegible] rubber stamp con[illegible] of the two [illegible]ively. *Held:* [illegible] the co. Schaefl[illegible] & Co., Ltd., [192[illegible] 1 D. L. R. 469; 1 W. W. R. 213.—CAN.

763 v c. — — *"Hire" & "Secretary" added after signat[illegible] v note* [illegible] to pay. [illegible] E. F.; Secretary. [illegible] of [illegible] per[illegible] C. 643.—Scot[illegible]

"Fashions Fair Exhibition, Ltd. A.B. & C.D., directors," & one of them when returning the accepted bill drew attention in his letter to the fact that it was "duly indorsed by two directors of the co. as requested by you." In an action against A.B. & C.D. as indorsers of the bill:—*Held:* (1) they were personally liable, upon the ground that if the indorsement was to be treated as that of the co. it gave no greater validity to the bill than was already contained in the acceptance, & therefore under 1882 Act, s. 26 (2), the construction that it was the personal indorsement of defts. was to be adopted; (2) even if the indorsement stood by itself, as defts.' signature did not in terms say that they were signing on behalf of the co., the addition to their names of the word "directors" must be treated as a word of description only & not as excluding their liability; (3) the ct. were entitled to look at the surrounding circumstances under which the bill was signed, including the letters which passed between the parties on the subject of the indorsement, from which it was to be inferred that defts. by indorsing intended to guarantee the payment of the bill.—ELLIOTT *v.* BAX-IRONSIDE, [1925] 2 K. B. 301; 94 L. J. K. B. 807; 133 L. T. 624; 41 T. L. R. 631, C. A.

Part X.—Consideration.

772. *Add. Annotation:*—*As to* (1) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

773. *Add. Annotations:*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41.

786. *Add. Annotation:* **Mentd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

801. *Add. Annotation:* **Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

803. *Add. Annotations:*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 107; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32. **Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Sutters *v.* [illegible], [1922] 1 A. C. 1. **Mentd.** Jeffrey *v.* Bamford, [1921] 2 K. B. 351; Greenhalgh *v.* Union Bank of Manchester, [1924] 2 K. B. 153.

826. *Add. Annotation:*—**Mentd.** Fettes *v.* Robert- (1921), 37 T. L. R. 581.

5. *Add. Annotation:*—**Mentd.** Holt *v.* Markham L. T. 719.

837. *Add. Annotation:*—**Refd.** Sutters *v.* [1922] 1 A. C. 1.

868. *Add. Annotation:*—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

895. *Add. Annotation:*—**Refd.** Allen *v.* Royal [illegible] of Canada (1925), 41 T. L. R. 625.

898a —— **Under 1882 Act, s. 21 (2)—Payee.**]—The original payee of a cheque is not a "holder in due course" within the above sect. —JONES (R. E.), LTD. *v.* WARING & GILLOW, LTD., [1926] A. C. 670; 95 L. J. K. B. 913; 135 L. T. 518; 42 T. L. R. 641; 70 Sol. Jo. 756; 32 Com. Cas. 8, H. L.

897. *Add. Annotation:*—**Apprvd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

899. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

901. *Add. Annotation:*—**Consd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

902. *Add. Annotations:*—**Consd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787; Robinson *v.* Marsh, [1921] 2 K. B. 640. **Mentd.** Jeffrey *v.* Bamford, [1921] 2 K. B. 351; Maskell *v.* Hill, [1921] 3 K. B. 157; Cohen *v.* Hall, [1922] 2 K. B. 37; Ford *v.* Blurton, Ford *v.* Sauber (1922), 38 T. L. R. 801; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87.

922. *Add. Annotation:*—**Mentd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

935. *Add. Annotation:*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

942. *Add. Annotation:*—**Refd.** Sutters *v.* [1922] 1 A. C. 1.

943. *Add. Annotations:*—**Mentd.** Obschestvo A. M. Luther *v.* Sagor, [1921] 3 K. B. 532; Robinson *v.* Marsh, [1921] 2 K. B. 640.

945. *Add. Annotation:*—**Refd.** Maskell *v.* Hill, [1921] 3 K. B. 157.

959. *Add. Annotation:*—**Mentd.** Maskell *v.* Hill, [1921] 3 K. B. 157.

960. *Add. Annotations:*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Sutters *v.* Briggs, [1922]

PART X. SECT. 1, SUB-SECT. 3.

[illegible]. *Forbearance to sue* the giving of a note to [illegible]ator, &

[illegible] *v.*

2 W. W. R. 8 15 Alta. L. 479.—CAN.

PART X. SECT. 1, SUB-SECT. 5.

se. *by guil-*

[illegible] *v.* [illegible]REAULT (1920), 48 N. B. R. 200; D. L. R. 512.—CAN.

PART X. SECT.

ii. ——.]—CANADIAN BANK OF [illegible] N. S. R.

PART X. SECT. 3

i. *Liability of*

ia-

1 W. W. R. 1280; 63 D. L. R. 694.—CAN.

PART X. SECT. 5.

UNION BANK OF CANADA *v.* [illegible] W. W. R. 649:

1

896 v. —— ——.]—WRICKER *v.* MORTIMER, [1922] 2 W. W. R. 725; 15 Sask. L. R. 436.—CAN.

vi.

v. WARK, N. B. R.

[illegible]NNS, LTD. [illegible] 1 D. L. R. 377; 51 CAN.

——.]—MARSHALL *v.* 1 D. L. R. 838.—CAN.

907 i. *on face*

A party who knows that a note been signed in blank & negotiated to him before being filled out is not a holder in due course.—SAVARD *v.* TREMBLAY (1922), Q. R. 34 K. B. 458.—CAN.

ii. —— ——.]—Pltf. purchased a [illegible] model motor-truck from G. A [illegible]yment was made on [illegible] promissory notes given for the [illegible] assignment agreement & notes to defts. for valuable consideration, of which pltf. had due notice. Later pltf. found the truck was a 1913 model but continued to use it. He then brought an action for cancellation of the notes: —*Held:* defts. were holders of notes in due course & had [illegible] any *onus* for the fraudulent of G. of which the FRASER *v.* MCGREGOR, JOHNSTON & THOMAS, LTD. (1922), 31 B. C. R.

1 A. C. 11. **Mentd.** Maskell *v.* Hill, [1921] 3 K. B. 157.

964. *Add. Annotation :*—**Apld.** Greenberg *v.* Cooperstein, [1926] Ch. 057.

971. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

995. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1037. *Annotations :*—Delete "Barwick *v.* S. E. & C. Ry. Cos., [1920] 2 K. B. 387; Bombay & Persia Steam Navigation Co. *v.* MacLay, [1920] 3 K. B. 402; Markwald *v.* A.-G., [1920] 1 Ch. 348."

Add. Annotation :—**Refd.** Maclaine *v.* Eccott (24), 132 L. T. 173.

1038. *Add. Annotation :*—**Mentd.** French Marine *v.* Compagnie Napolitaine d'Eclairage et de Chauffage par le Gaz, [1921] 2 A. C. 494.

1052. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

1054. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1093. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1096. *Add. Annotation :*—**Mentd.** R. *v.* Jenkins, R. *v.* Evans-Jones (1923), 87 J. P. 115.

1123. *Add. Annotation :*—**Mentd.** Maskell *v.* Hill, [1921] 3 K. B. 157.

1132. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

Part XI.—Negotiation and Transfer.

1161. *Add. Annotations :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Mentd.** The Joannis Vatis (1921), 91 L. J. P. 182.

1163. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1178. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1190. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

1248. *Add. Annotations :* **Consd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1250. *Add. Annotations :* **Apld.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Apprvd.** McDonald *v.* Nash, [1924] A. C. 625.

PART X. SECT. 7.

993 v. — — — — *Assignment by vendor of rights under contract to third party—Property in goods never passing to purchaser.*]—MONTICELLO STATE BANK *v.* KILLORAN, [1920] 3 W. W. R. 542.—**CAN.**

PART X. SECT. 8, SUB-SECT. 1.

s i. — *Verbal* *that note* *be* *on* *of* *event.*]—DENNIS *v.* IVEY — BOYCE, [1920] 3 W. W. R. 744.—**CAN.**

s ii. — — *Note given to s* *assets—Estoppel of maker.*]—HAY *v.* —LEN, [1921] 1 W. W. R. 33.—**CAN.**

s iii. —]— KLOTZ *v.* JOHAN, [1925] 3 D. L. R. 105.—**CAN.**

PART X. SECT. 8, SUB-SECT. 2.

1040 ii. —— — — ——.]—The maker of a post-dated cheque the consideration for which has failed & payment of which he has stopped, is liable thereon to a bank which in good faith & without knowledge of the facts has before its date received it by indorsement from the payee & given credit therefor to the payee.—UNION BANK OF CANADA *v.* TATTERSALL, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—**CAN.**

PART X. SECT. 9, SUB-SECT. 1.

1059 xv. ——.]—Where notes were s for fraud, & the signer was not by any negligence on her —*Held:* the third party, a a holder in due course, had no t to recover from her.—DUNSHEA *v.* KESTEVEN, [1922] N. Z. L. R. 1032. —**N.Z.**

PART X. SECT. 10, SUB-SECT. 1.

1062 i. Add "*caried*, (1917, 1 W. W. R. 1177."

X. SECT. 10, SUB-SECT. B

ix. —— ——.]—Fraud is no where an action on a note is by a holder in due course. It hifts the burden to plff. to show that he took the note before maturity, in good faith, for value & with no notice of the fraud.—CANADIAN BANK COMMERCE *v.* PEEBLES, [1921] 1 D. L. R. 225.—**CAN.**

PART XI. SECT. 4.

g (p. 185) **i.** —— — — —.] To be the holder of a promissory note & entitled to sue on it in his own name, plff. must be either the payee or the indorsee in of the BARNEY *v.* LAUZON, [1923] 2 W. W. R. 19.—**CAN.**

m (p. 188) **i.** *ment to evade counterclaim.*] made a note in favour of C., who lost it. C. made an nt of it to J. in order that J. might bring an counterclaim against C. Just trial the note was found & to J.:—*Held:* C. must be joined as plff., & deft. allowed to bring in his counterclaim.—JONES & COLQUHOUN *v.* FINCH (1922), 66 D. L. R. 822. **CAN.**

m (p. 188) **ii.** — — — — *Indorsement in consideration of advances repaid.*] *Held:* an action be brought either in the name of the indorser or holder.—CLOW *v.* [1920] 1 W. W. R. 1060. **CAN.**

m (p. 188) **iii.** — — — — "*On of*" *payee.*]—An indorsement was not struck out & action was brought on the note in the name of the payee. At the trial the judge allowed plff. to amend by adding the indorsee as co-plff., deft. having objected that plff. had no right of action; & judgment was given for the indorsee, but costs were given deft. against the payee, the original plff. Deft. appealed on that no amendment should have been allowed, & plff. was not entitled to judgment. Appeal dismissed. JACKSON MACHINES, Ltd. *v.* MICHALICK, [1922] 2 W. W. R. 572; 67 D. L. R. 182; . L. CAN.

d (p. 189) **i.** — *Payee of* *v.* DIXON, [1923] N. Z. L.

PART XI. SECT.

i. *selling*

PART XI. SECT. 4.

of in of a on the a , in the its assets to another bank Act, ss. 99 to 111, & the agreement for sale has been approved by the Governor in Council, the purchasing bank may sue in its own name in respect of a note, part of the assets d, notwithstanding that the as not been indorsed by the bank as required by Bills of Act.—BANK OF MONTREAL *v.* IRVINE & EINSTEIN, [1924] 3 D. L. R. 752, 2 W. W. R. 1017. **CAN.**

PART XI. SECT. 15, SUB-SECT. 1.

af. "*Indorsed*" *written opposite signature.*] A promissory note was signed by W. & M. on the face of the note & opposite M.'s signature the word "indorsed" was written by a in the service of plff. co., to the note was made payable. *Held:* M did not sign the note with the intention of indorsing it, but as maker, though as between him & W. only as a surety, & the word "indorsed" was merely a memorandum show that M. was a E. (A. D.) Co., Ltd. *v.* WHITFIELD & MICHAUD (1920), 48 O. L. R. 605; 58 D. L. R. 326; 19 O. W. N. 336. **CAN.**

PART XI. SECT. 15, SUB-SECT. 2.

k i. — *of company.*] If a co. authorises that its bank may accept for deposit cheques "purporting to be indorsed by any one direct or secretary or treasurer," an ad ment is good which is made by who not t t TATTERSALL, W. W. 497; 52 D. L. R. 407; 15 Alta. L. R. 350. **CAN.**

k ii. — — — — — .] PRL. 1925] 3 L. R 2 W. W. 1135 **CAN.**

k i 1925] 3 D. L. R. 488; 57 O. **CAN.**

1306. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

1318. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1319. *Add. Annotation :*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1324. *Add. Annotations :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Mentd.** The Joannis Vatis (1921), 91 L. J. P. 182.

1334. *Add. Annotation :*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625.

Part XII.—General Duties of Holder.

1388. *Add. Annotation :* **Mentd.** The St. George, [1926] P. 217.

1397. *Add. Annotation :* **Mentd.** Maclaine *v.* Eccott (1924), 132 L. T. 173.

1407. *Add. Annotation :* **Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1418. *Add. Annotation :* **Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1628. *Add. Annotation :* **Mentd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

1629. *Add. Annotation :*—**Mentd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1637. *Add. Annotation :*—**Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1664. *Add. Annotation :*—**Mentd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1688. *Add. Annotations :*—**Mentd.** Goldman *v.* Cox (1924), 40 T. L. R. 744; Jones *v.* Waring & Gillow, [1926] A. C. 670.

1715. *Add. Annotation :*—**Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

name of a promissory note made payable to the syndicate or its order: *Held:* to be a valid indorsement.—BAILEY *v.* BLAND, [1925] 2 D. L. R. 737; [1925] 2 W. W. R. 286; 19 Sask. L. R. 366. **CAN.**

PART XI. SECT. 15, SUB-SECT. 3. A.

1311 i. *Must be written on instrument Writing on face of note.*] Where the intention of all parties is that a signature is for the purpose of indorsement, it makes no difference where the signature is placed.—SIMONIN *v.* PHILION, [1922] 2 W. W. R. 1280; 66 D. L. R. 673. **CAN.**

sk *Allonge.*] Before finding that a sheet of paper is an allonge to a note, the ct. the evidence & with the greatest care, & the evidence in favour of such a finding should be of the strongest character.—BARNEY *v.* LARSON, [1923] 3 D. L. R. 110; 2 W. W. R. 19. **CAN.**

1313 i. *Must be signed. Name mis- Name properly spelt.* Although the word "limited" be omitted from a payee co.'s name in a cheque, there being no doubt of the co. being the intended payee, an indorsement of the cheque is effective by the proper signature of the payee on the back of it.—UNION BANK OF CANADA *v.* PATTERSON, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350. **CAN.**

PART XI. SECT. 15, SUB-SECT. 3. E.

indorsement related back to the when the note was given & the money paid.—CANADIAN BANK OF COMMERCE *v.* COLWELL (1923), 56 N. S. R. 347.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 4.

Bank to credit *Held:* & restrictive inc & The indorsee & holder is not cut to recover from the maker, who ha in good faith the amount of the to the payee.—

[1923] 2 D. L. R. 264; L. R. 521; [1923] 1 W. W. **CAN.**

PART XI. SECT. 17.

1367 iii. — *Apparent* —*Held*, it in order to title by reason of Bills of

tion was not to be

—ROYAL BANK OF CANADA *v.* ALLEN, [1919] 3 W. W. R. 1063; 49 D. L. R. 572; 15 Alta. L. R. 171.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2. A. (b).

1432 iii. — .] *Cheque in circulation six months; Held:* an unreasonable time & not recoverable.—BALLEM *v.* FRIED, [1923] 4 D. L. R. 1203. **CAN.**

1434 ii. — — *Cheque mislaid.—Delay* — — —

Part XIII.—Liability of Parties.

1983. *Add. Annotation :*—**Mentd.** Ratner *v.* London Joint City & Midland Bank (1922), 38 T. L. R. 253.

1993. *Add. Annotation :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1994. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

2040a. —— —— ——.]—Dunn (M.), Ltd. *v.* Jefferson, No. 577a, *ante*.

2060. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

2070. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

2088. *Add. Annotation :*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625.

2092. *Add. Annotations :*—**Distd.** McDonald *v.* Nash, [1924] A. C. 625. **Refd.** *Re* Gooch. *Ex p.* Judd, [1921] 2 K. B. 593.

2095. *Add. Annotation :* —**Consd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593.

2096. *Add. Annotations :*— **Distd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593; McDonald *v.* Nash, [1924] A. C. 625.

2096a. —— —— ——.]—J. sold certain goods to C., Ltd., of which G. was managing director & in which he was largely interested. In payment for these goods J. drew a bill of exchange to his own order at three months for £150 upon C., Ltd., who accepted it, & it was indorsed by G. before J. had indorsed it as payee, & his name appeared below that of G. The bill was indorsed by G. in order to enable J. to discount it, & for no consideration moving from J. to G., who was to be under no liability to J. The bill was discounted by J.'s bank & was not met at maturity. An arrangement was subsequently made by which C., Ltd., paid £100 in cash to the bank in part satisfaction & the bank received two bills drawn by J. to his own order & accepted by C., Ltd., for £175 each at one month & two months respectively. These bills were indorsed by G. before they were signed by J. either as drawer or payee. They were afterwards indorsed by J., whose name appeared on the bills below that of G. The first bill not having been met at maturity, J. took it up & sued C., Ltd., & G. upon the bill & recovered judgment, & afterwards presented a petition in bkpcy. in the county ct. against G., founded on the judgment debt, upon which a receiving order was made against him. On appeal :—*Held :* (1) J. had authority under 1882 Act, s. 20, to fill in his own name as drawer & payee ; (2) there was sufficient consideration passing from J. to G. to entitle J. to sue G. on the bill notwithstanding the order in which the signatures appeared on the bill ; (3) by reason of the agreement between J. & G., G. could not have set up any defence against J. arising out of his own prior indorsement ; (4) the judgment debt was a good petitioning creditor's debt & the receiving order was rightly made.—*Re* Gooch, *Ex p.* J [1921] 2 K. B. 593 ; 90 L. J. K. B. 932 ; 125 L. T. 583 ; [1921] B. & C. R. 100, C. A.

Annotation :—As to (1) **Apld.** McDonald *v.* Nash, A. C. 625.

2096b. —— —— ——.] In May, applts. sold to A. & Co. 19,000 cases of tinned soup at the price of 10*s.* per case, cash against delivery order. A. & Co., being unable to find the money, applied for financial assistance to resps. who undertook as between themselves & A. & Co. to find 75 per cent. of the money, there being then about 16,000 cases which had not been taken up. On Aug. 10, 1920, at a meeting between applts., resps. & A. & Co., it was agreed that resps. should indorse a series of eight bills of exchange, seven for £1,000 each & one for £117 odd, to be drawn by applts. on A. & Co. payable six months after date to applts.' order, & that applts., in consideration of the bills being duly indorsed by resps., should hand to resps. delivery orders for the balance of the cases. These bills were at once drawn by applts. on A. & Co. expressed to be payable to applts.' order, & were accepted by A. & Co & indorsed by resps. Room was left above the name of resps. for the indorsement of the name of any person to whom applts. should direct payment. Resps. then handed the bills to applts. in exchange for the delivery orders. One bill having been discharged, applts. shortly before the remaining bills became due indorsed their name as payee on the bills above resps.' signature. Applts. duly presented the bills to A. & Co., who dishonoured them. They then gave notice of dishonour & claimed payment from resps., who denied liability. In an action by applts. to recover the amount of the bills against resps. as indorsers : - *Held :* (1) on the facts resps. must be taken to have intended to make themselves liable to applts. on the bills ; (2) the bills, when handed to applts., were wanting in a material particular within 1882 Act, s. 20, by reason of the absence of any indorsement by applts. above the signature of resps., & applts. had implied authority to fill in their name payees, as they did, over the name of resps. & when so filled up, the tively enforceable. N Co. *v.* Nash & Co., [1924] A. C L. J. K. B. 610 ; 131 L. T. 428 ; 40 T. L R. ; 68 Sol. Jo. 594 ; 29 Com. Cas. H. L.

—*As to* (2 2 K. B. 301 ; Kreglo [1926] 2 K. B. 450 H *v.* Bax H G. m. b. H. *v*

2097. *Add. Annotations :* **Apld.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Apprvd.** McDonald *v.* Nash, [1924] A. C. 625.

PART XIII. SECT. 1.

i. Cheque—Not
—Rowlatt *v.* Garment (J. & G.) Manufacturing Co. (1921), 64 D. L. R. 88 ; 49 O. L. R. 166.—**CAN.**

PART XIII. SECT. 3, SUB-SECT.

2052 ii. — — ——.]—Lee *v.* [1924] 4 D. L. R. 369 310.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 1.—A.

2058 *v.* ——.]— An indorsement does not conclusively establish a to pay, but indorsement *facie* evidence of an agreement to

i. —Lee *v.* Blake, [[4 D. L. R. 5 O. L. R. 310. **CAN.**

PART XIII. SECT. 4, SUB-SECT 2.

Ind
m of

o
1, P. 639.—**N.Z.**

2103. *Add. Annotation :*—**Refd.** McDonald *v.* N. [1924] A. C. 625.

2116. *Add. Annotation :*—**Mentd.** *Re* Wait, [1926] Ch. 962.

2118. *Add. Annotations :*—**Refd.** The Kronprinsessan Margareta, The Parana, etc., [1921] 1 A. C. 486. **Mentd.** Folkes *v.* King, [1923] 1 K. B. 282; Laurie & Morewood *v.* Dudin (1926), 134 L. T. 309.

2136. *Add. Annotation :*—**Mentd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

2145. *Add. Annotation :*—**Mentd.** Bowling *v.* Camp (1922), 128 L. T. 312.

2161. *Add. Annotations :*—**N.F.** Uliendahl *v.* Pankhurst Wright (1923), 39 T. L. R. 628; Peyrac *v.* Wilkinson, [1924] 2 K. B. 166. **Refd.** *Re* Chesterman's Trusts, Mott *v.* Browning, [1923] 2 Ch. 466.

2169. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

2176. *Add. Annotation :*—**Mentd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529.

2205a. —— —— —— Illegality of payment during war.]—Bills of exchange which were accepted before the war, & which became due after war was declared, were held by the drawer, who was resident in Germany, & was an enemy for the purpose of the Trading with the Enemy Acts. After the declaration of peace the holder sued the acceptors, claiming interest from the dates when the bills respectively matured :—*Held :* as there was no breach of duty in not paying the bills as long as the war continued, & as payment did not become legal until the declaration of peace with Germany on Jan. 10, 1920, interest was only recoverable from that date.—BIEDERMANN *v.* ALLHAUSEN & Co. (1921), 37 T. L. R. 662.

2225. *Add. Annotation :*—**Folld.** Dresdner Bank *v.* Russo-Asiatic Bank, [1923] 1 Ch. 209.

Part XIV.—Discharge.

2269. *Add. Annotation :*—**Mentd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

2280. *Add. Annotation :*—**Refd.** Société des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2286. *Add. Annotation :*—**Mentd.** Société des Hotels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2308. *Add. Annotation :*—**Refd.** Société des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2314. *Add. Annotation :*—**Refd.** Société des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2318a. Agreement to pay money—Consideration uncertain.]—A beneficiary under testator's will was a debtor of his who had owed him y under a y note given in 1877, & had, in into an ment with testator to pay him a certain sum of money for which no distinct consideration could be clearly ascertained :—*Held :* (1) there was a presumption of law that the promissory note had been discharged by accord & satisfaction on the entrance into the later agreement : (2) there was no presumption that the money still due under the agreement had been forgone by testator.—WOODCOCK *v.* EAMES (1925), 69 Sol. Jo. 411.

2362. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2364. *Add. Annotations :*—**Distd.** Goldman *v.* Cox (1924), 40 T. L. R. 744. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2368. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Mentd.** Holt *v.* Markham (1922), 128 L. T. 719.

2370. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Mentd.** Holt *v.* Markham, [1923] 1 K. B. 504.

2396. *Add. Annotation :*—**Mentd.** Fettes *v.* Robertson (1921), 37 T. L. R. 581.

PART XIII. SECT. 6.

2098 *v.* - - - - .)—PARKER WOOD & CO., LTD. *v.* EDWARDS (1925), 46 N. L. R. 277.—**S. AF.**

vi. - - - - - - .)—R. y notes in favour of H.

/ was that of a & not of r with R rian *v.* 6), 47 N. R. 149.—**S. AF.**

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that he has signed as will be held to be a

that

he was not. r. 4 D. L. R. ; 3 W. W. R. 56 **CAN.**

2101 - - - - - .)—A

to or indorsement by as surety under in the position of indorser.—MOTT & CO.

CASSIM'S T 720.—**S. AF.**

2101 .)—A r- a

y note h of not an indorser, but or y for the maker.—A *v.* MAHARAJ (1925), 46 N. L. R. ---. **S. AF.**

PART XIII. SECT. 10.

11.

r. (1921), 67 D. L. R. 767.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 2.

TER *v.* 391 . .] N. Z. L. R

PART XIII. SECT. 11, SUB-SECT. 3

2227 iii. —.) defts the from

O. L. R. 24 ; 30 O. L. R. **CAN.**

PART XIII. SECT. 11, SUB-SECT. 6.

b. Add "*Reral on other gr* 56 S. C. R. 165."

PART XIV. SECT. 1 SUB-SECT. 4.

ii. *Mortgage to s ent of future advances—Given during of note.*]—*Held :* the mtge. not strictly coextensive with the note, the remedy on the note was not merged in the mtge., & deft. was liable.— . *v.* LYE, [1923] N. Z. L. R.

sp. *Payment under garnishment proceedings by judgment creditor of payee.*]—*Held :* in the circumstances no answer to the indorsee's claim.—CLOW *v.* DOULL, [1920] 1 W. W. R **CAN.**

sr. *Notes given to secure*

were balance due on the first note prior to the contract, but as given subsequently the not be credited agai advances made, & the plea of pa must prevail.—TYRRELL CO. *v.* LUMBER CO. (1922), 55 N. S. R. 441 **CAN.**

2416a. —— —— Verbal agreement for acceptance of composition.]—Pltf. was the holder of a bill of exchange accepted by deft. for goods supplied. Before the bill became due deft. had made a verbal offer to his creditors to pay a composition in discharge of his liabilities. At a meeting of the creditors, which was attended by pltf.'s agent, the creditors passed a resolution accepting deft.'s offer. The resolution was reduced to writing & was signed by a number of the creditors, including pltf.'s agent, but not by deft. The creditors subsequently executed a deed assigning their debts to deft.'s solr. in consideration of deft.'s solr. paying the amounts owing to them under the composition. Pltf. was not a party to that deed. In an action by the holder of the bill against the acceptor, for the amount of the bill:—*Held:* upholding a contention of pltf., which was not raised in the cts. below, 1882 Act, s. 62, had not been complied with, as pltf. had neither renounced his rights under the bill in writing, nor delivered the bill up to the acceptor &, therefore, pltf. was entitled to recover the full amount of the bill.—RUMALT v. CARTWRIGHT (1924), 93 L. J. K. B. 823; 132 L. T. 40; 40 T. L. R. 803; 68 Sol. Jo. 788; [1924] B. & C. R. 239, C. A.

2446. *Add. Annotation:*—**Mentd.** Brown v. Swan (1921), 37 T. L. R. 787.

2473. *Add. Annotation:* **Refd.** McDonald v. Nash, [1924] A. C. 625.

2485. *Add. Annotation:* **Mentd.** Bowling v. Camp (1922), 128 L. T. 342.

2518. *Add. Annotation:* **Mentd.** Joachimson v. Swiss Bank Corpn., [1921] 3 K. B. 110.

2552. *Add. Annotation:* **Mentd.** New York Life Insce. v. Public Trustee, [1924] 1 Ch. 15.

2556. *Add. Annotation:* **Mentd.** Société des Hôtels Le Touquet Paris-Plage v. Cummings, [1922] 1 K. B. 451.

2686. *Add. Annotation:* **Refd.** McDonald v. Nash, [1924] A. C. 625.

Part XVIII.—Conflict of Laws.

2775. *Add. Annotation:* — **Mentd.** Maclaine v. Eccott (1924), 132 L. T. 173.

2781. *Add. Annotations:*—**Mentd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532; Robinson v. Marsh, [1921] 2 K. B.

2783. *Add. Annotation:*—**Mentd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532.

2784. *Add. Annotation:* **Mentd.** Sutters v. [1922] 1 A. C. 1.

2800. *Add. Annotation:* **Mentd.** McDonald v. Nash, [1924] A. C. 625.

2812. *Add. Annotation:* **Mentd.** Perlak Petroleum Maatschappij v. Deen, [1924] 1 K. B. 111.

2814. *Add. Annotation:* **Mentd.** The Colorado, [1923] P. 102.

Part XIX.—Cheques.

2846. *Add. Annotation:*—**Mentd.** Sutters v. Briggs, [1922] 1 A. C. 1.

2847. *Add. Annotations:*—**Refd.** Sutters v. Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41.

2849. *Add. Annotation:* **Consd.** London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.

2850. *Add. Annotation:*—**Refd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

2851. *Add. Annotations:*—**Refd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775. **Mentd.** Go[illegible] v. Cox (1921), 40 T. L. R. 423; Australian Bank of Commerce v. Perel, [1926] A. C. 737; Jones v. Waring & Gillow, [1926] A. C. 670.

2852. *Add. Annotations:* **Apprvd.** Sutters v. Briggs, [1922] 1 A. C. 1. **Refd.** Brown v. Swan (1921), 37 T. L. R. 787. **Mentd.** Jeffrey v. Bamford, [1921] 2 K. B. 351; Maskell v. Hill, [1921] 3 K. B. 157; Robinson v. Marsh, [1921] 2 K. B. 640; Cohen v. Hall, [1922] 2 K. B. 37; Ford v. Burton, Ford v. Sauber (1922), 38 T. L. R. 801; Scranton's Trustee v. Pearse, [1922] 2 Ch. 87.

PART XIV. SECT. 4.

2401 i. *At what time—Before maturity—No necessity for evidence of discharge to be in writing.*]—LYONS v. SMITH, [1923] 3 W. W. R. 684; 70 D. L. R. 101.—**CAN.**

PART XIV. SECT. 11.

e i. —— *First note destroyed.*]—*Held:* the original indebtedness was [illegible] & the second note was not a [illegible] ONTAL v. SIMOVITCH (1922), 70 D. L. R. 861.—**CAN.**

PART XIV. SECT. 12, SUB-SECT. 1.

2639 ia. [illegible]—The relation of principal & surety is created by indorsement of a bill for accommodation, & if a creditor discharges the principal debtor, the surety is also discharged.—HARRIS v. LERNER, [1921] 2 D. L. R. 518; 30 B. L. N. S. 63.—**CAN.**

PART XIV. SECT. 12, SUB-SECT. 3.

3i. *Deposit with creditor of securities as collateral to notes—Securities entrusted to principal debtor for collection.*]—Premium notes, indorsed by G. & F., were deposited with pltf. as security collateral to two notes made by F. [illegible] for [illegible] be collected. *Held*, both G. & F. liable.—BOURTEY v. GORMAN & [illegible] (1920), 47 O. L. R. 420; 18 O. W. N. 173.—**CAN.**

PART XVI. SECT. 3.

sw.
—Pltf. bought stolen bearer bonds in good faith: *Held:* pltf. had acquired a good title. GAREY v. DOMINION MANUFACTURERS, LTD., [1925] 1 D. L. R. 99; 56 O. L. R. 159.—**CAN.**

Part XX.—Negotiable Instruments other than Bills of Exchange, Promissory Notes, and Cheques.

2862. *Add. Annotation :*—**Mentd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

2866. *Add. Annotation :*—**Mentd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101.

2898. *Add. Annotation :*—**Mentd.** *Re* Richards, Jones *v.* Rebbeck, [1921] 1 Ch. 513.

2908. *Add. Annotation :*—**Mentd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

2911. *Add. Annotations :*—**Refd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167. **Mentd.** Diamond Alkali Export Corpn. *v.* Bourgeois, [1921] 3 K. B. 443; McDonald *v.* Nash, [1924] A. C. 625; Jones *v.* Waring & Gillow, [1926] A. C. 670.

Part XXI.—I.O.U.'s.

2924. *Add. Annotation :*—**Mentd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 3 K. B. 532.

2928. *Add. Annotation :*—**Mentd.** Camillo Tank S.S. Co. *v.* Alexandria Engineering Works (1921), 38 T. L. R. 134.

2929. *Add. Annotation :*—**Mentd.** Camillo Tank S.S. Co. *v.* Alexandria Engineering Works (1921), 38 T. L. R. 134.

Part XXII.—Actions on and in Connection with Negotiable Instruments.

2978. *Add. Annotation :*—**Mentd.** Robinson *v.* Marsh, [1921] 2 K. B. 610.

2996. *Add. Annotation :*—**Mentd.** Robinson *v.* Marsh, [1921] 2 K. B. 610.

3053. *Add. Annotation :*—**Mentd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

3056. *Add. Annotation :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775

Part XXIII.—Securities for Negotiable Instruments.

3120. *Add. Annotations :* ... (2) **Refd.** Aman *v.* Southern Ry. (1 ... 42 T. L. R. 31. ... *ly*, **Mentd.** Ellis' Trustee *v.* Dixon Johnson, [1924] 2 Ch. 451.

Part XXV.—Stamp Duties.

Add. **Mentd.** Friars ... t Trust ... 25), 133 L. T.

3170. *Add. Annotation :* **Mentd.** Allen *v.* R Bank of Canada (1925), 41 T. L. R. 625.

3172. *Add. Annotation :* ...

3175. *Add. Annotation :*—**Mentd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

3209. *Add. Annotation :*—**Mentd.** Jonchimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

PART XX. SECT. 2, SUB-SECT. 7.

... COMMERCE *v.* JOHNSON, ... D. L. R. 511; [1925] 3 W. W. ... 922] 3 W. W. ... E FINAN- ... LTD. *v.* NANCE, [1920] 1 W. W. R. 694; 51 D. L. R. 231.—**CAN.**

PART XXII. SECT. 1.

3951 a. ... **CAN.**

PART XXII. SECT. 7.

... *sy.* ... *out—When* ... is admissible in evidence & may amount to an earnest or part payment.—STYKES *v.* GECK, [1920] 1 W. W. R. 741.—**CAN.**

15 Sask. L. R. 448

ez.

BILLS OF SALE.

Part I.—Objects and Application of Bills of Sale Acts.

6. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

7. *Add. Annotation :* —**Mentd.** French *v.* [1922] 1 K. B. 236.

Part II.—What Transactions are Bills of Sale and require Registration.

11. *Add. Annotation :*—**Refd.** French *v.* Gething, [1922] 1 K. B. 236.

12. *Add. Annotation :*—**Mentd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

15a. —— **Sale—Re-letting to seller.**]—BRITISH RAILWAY TRAFFIC & ELECTRIC CO. *v.* KAHN, [1921] W. N. 52.

41. *Add. Annotation :*—**Mentd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

42. *Add. Annotation :*—**Mentd.** French *v.* Gething [1922] 1 K. B. 236.

44. *Add. Annotations :*—**Expld. & Apld.** French *v.* Gething, [1922] 1 K. B. 236. **Mentd.** Canvey Island Comrs. *v.* Preedy, [1922] 1 Ch. 179.

52. *Add. Annotation :*—**Mentd.** Stephenson *v.* Thompson, [1924] 2 K. B. 210.

82. *Add. Annotations :*—*As to* (1) **Consd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807. *As to* (2) **Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

90. *Add. Annotations :*—**Apld.** *Re* Allester, [1922] 2 Ch. 211. **Mentd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

93. *Add. Annotation :*— **Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

93a. —— —— **Room on borrower's premises.**]—Deft. co., in order to secure pltf. against loss on a certain contract & in consideration of pltf. giving further time within which to pay for the goods, set aside certain specified goods in two rooms on defts.' premises, which were locked up & the keys handed to pltf., no other goods being in those two rooms. The terms of the transaction were recorded in two letters written by deft. co. to pltf., one letter written before the keys were handed over, & the second letter subsequently. The second letter contained the words: "The goods to be locked up, the keys in your possession, & you to have the right to remove same as desired." The co. went into liquidation & the liquidator claimed that the transaction was invalid under Companies Act, 1908 (c. 69), s. 93 (1) (c), as being a charge created or evidenced by an instrument which if executed by an individual would re registration as a bill of sale. Pltf. br an action claiming a declaration that the goods were in his possession, & that he was entitled to remove them: *Held:* possession of the goods passed to pltf. by the delivery of the keys of the rooms in which they were locked up, notwithstanding that those rooms were on defts.' premises, inasmuch as defts. had conferred upon pltf. a licence to make the necessary entry in order to use the keys, which licence could not be revoked, & therefore the transaction was valid as against the liquidator, & pltf. was entitled to remove the goods. WRIGHTSON *v.* MCARTHUR & HUTCHISONS, [1921] 2 K. B. 807; 90 L. J. K. B. 812; 125 L. T. 383; 37 T. L. R. 575; 65 Sol. Jo. 553; [1921] B. & C. R. 136.

95. *Add. Annotation :* **Mentd.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 80.

97. *Add. Annotation :* —**Consd.** French *v.* Gething, [1922] 1 K. B. 236.

PART I.

sa. *Bills of Sale & Chattel Mo Act, R. S. M.*, 1913 (c. 17)—*Not able to mortgage of equity in ged goods.*]—The above Act doe apply to a chattel mtge. which ly covers not the goods therein referred to therein but any t or equity which mtgor. may have in them after the claim of a prior named mtgee. shall have been satisfied.—BANQUE D'HOCHELAGA *v.* BROWNSTONE, [1925] 3 D. L. R. 176; [1925] 2 W. W. R. 349; 35 Man. L. R. 62.—**CAN.**

PART II. SECT. 1.

10 li. Add "*revsd.*, [1920] 3 W. W. R.

PART II. SECT. 2.

sb. *Declaration referring to s of No power in seize or take possession.*]—PURCELL DEPUTY FEDERAL TAXATION C (1920), 28 C. L. R. 77.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.

28 l. Add "*revsd.*, [1922] 3 W. W. R. 421."

PART II. SECT. 4.

t l. —— *Goods paid for but not de*]—*Held:* registration not re under Bills of Sale Act in order t purchaser's right to goods ntly manufactured & paid for the agreement, the property in which had passed to him but which were still on vendor's premises.—ALLEN-STOLTZE LUMBER CO., LTD. *v.* LAKE LUMBER CO., LTD., W. W. R. 805.—**CAN.**

sc. (agreement d

B. C. W. N.

CAN.

PART II. SECT. 5, SUB-SECT. 4.

80 l. *Following alleged sale to vendo* C. purchased an automol partly in cash & partly by dated to

in hire

an Bills of S Act.—BURNET (H. P.) Co. *v.* S (1920), 29 B. C. R. 7 —**CAN.**

98. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

98a. **Letter assigning chattel in hands of third party—Or proceeds of sale—As security for overdraft.**]—The owner of a motor car which was in the hands of deft., a motor engineer, for the purpose of repairs, & which he had instructed deft. to sell on his behalf when repaired, had an account at pltfs.' bank, which was overdrawn. Being requested by pltfs. to give security for the overdraft he wrote to deft. a letter authorising him "to hold the car to the order of" the bank "or the proceeds when sold," & sent a copy of that letter to pltfs. The letter was not registered as a bill of sale. The car having been sold & the price received by deft., pltfs. claimed the proceeds :—*Held :* the letter in question created one entire charge upon the car & the proceeds which represented it, & the equitable assignment of the proceeds could not be severed from the assignment of the car itself ; the letter was consequently a bill of sale & void for want of registration & for non-compliance with the statutory form.—NATIONAL PROVINCIAL & UNION BANK OF ENGLAND *v.* LINDSELL, [1922] 1 K. B. 21 ; 91 L. J. K. B. 196 ; 126 L. T. 319 ; 66 Sol. Jo. (W. R.) 11 ; [1921] B. & C. R. 209.

Annotation :—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

101. *Add. Annotation :*—**Mentd.** *Re* Chaplin & Staffordshire Potteries Waterworks Co.'s Contract, [1922] 2 Ch. 824.

104. *Add. Annotation :*—**Expld. & Apld.** Shears *v.* Jones, [1922] 2 Ch. 802.

107. *Add. Annotation :*—**Mentd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

110a. ——.]—An agreement to execute a bill of sale, to secure payment of a debt, in the event of the debt not being paid by a certain date, is a bill of sale within 1882 Act, & is void unless the requirements of that Act as to registration are complied with.—SHEARS & SONS, LTD. *v.* JONES, [1922] 2 Ch. 802 ; 92 L. J. Ch. 28 ; 128 L. T. 218 ; 66 Sol. Jo. 682 ; [1922] B. & C. R. 211.

112. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Trustee (1925), 134 L. T. 264.

Part III. Instruments not within the Expression "Bi of Sale."

128. *Add. Annotations :* **Folld.** French *v.* Ge [1922] 1 K. B. 236. **Refd.** Canvey Island Comrs. *v.* Preedy, [1922] 1 Ch. 179.

132. *Add. Annotation :*—**Mentd.** The James W. Elwell, [1921] P. 351.

133. *Add. Annotations :*—**Refd.** The Harlow, [1922] P. 175 ; Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724.

138. *Add. Annotation :*—**Refd.** *Re* Allester, [1922] 2 Ch. 211.

138a. **Letter of trust on redelivery for realisation of pledged bills of lading.**]—A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the ls, the co. in accordance with the well- mercantile practice obtained the of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees & to remit the entire net proceeds as realised :—*Held :* the letter of trust was not a bill of sale at all within the definition of 1878 Act, s. 4. *Semble :* if it had been so, it would on the evidence have been a document "used in the ordinary course of business" within the exception in that definition.—*Re* ALLESTER (D.), LTD., [1922] 2 Ch. 211 ; 91 L. J. Ch. 797 ; 127 L. T. 434 ; 38 T. L. R. 611 ; 66 Sol. Jo. 486 ; [1922] B. & C. R. 190.

138b. **Agreement for sale of growing crop.**]—An for the sale of a growing crop is a transfer of "goods" within 1878 Act, s. 4, & is therefore excepted from the definition of "bill of sale" in that sect. as being a "transfer of goods in the ordinary course of business of any trade or calling."—STEPHENSON *v.* THOMPSON, [1924] 2 K. B. 240 ; 93 L. J. K. B. 771 ; 131 L. T. 279 ; 88 J. P. 142 ; 40 T. L. R. 513 ; 68 Sol. Jo. 536 ; 22 L. G. R. 359 ; [1924] B. & C. R. 170, C. A.

144a. —— —— **Society incorporated under Industrial & Provident Societies Act, 1893 (c. 39).**]—Upon a claim by a debenture-holder in the winding up of a society incorporated under the above Act to be declared a secured creditor, the question arose whether the debenture, by which the property of the present & future was charged to the repayment of the principal sum & interest, was void by reason of Bills of Sale Acts, as to all or any of the assets of the society thereby charged :—*Held :* (1) the society was not an incorporated co. within the exception from 1882 Act, mentioned in sect. 17 of that Act ; (2) the property charged by the debenture, although described in general terms, was severable ; &, accordingly, the debenture was a valid charge upon such of the assets of the society as did not consist of personal chattels within 1878 Act, s. 4.—*Re* NORTH WALES PRODUCE & SUPPLY SOCIETY, [1922] 2 Ch. 340 ; 91 L. J. Ch. 415 ; 127 L. T. 288 ; 38 T. L. R. 518 ; 66 Sol. Jo. 439 ; [1922] B. & C. R. 12.

148. *Add. Annotations :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340 ; National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 2

149. *Add. Annotations :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340; National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

151. *Add. Annotation :*—**Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

155. *Add. Annotation :*—**Apld.** Lemon *v.* Austin Friars Investment Trust (1925), 133 L. T. 790.

156. *Add. Annotations :*—**Consd.** Lemon *v.* Austin Friars Investment Trust, [1926] Ch. 1. **Refd.** Dey *v.* Rubber & Mercantile Corpn., [1923] 2 Ch. 528.

158. *Add. Annotation :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

Part IV.—Subject-Matter of Bills of Sale—"Personal Chattels."

160. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

168. *Add. Annotation :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

176. *Add. Annotation :*—**Mentd.** Vaudeville Electric Cinema *v.* Muriset, [1923] 2 Ch. 74.

190. *Add. Annotation :*—**Distd.** Stephenson *v.* Thompson, [1921] 2 K. B. 240.

191. *Add. Annotation :*—**Mentd.** *Re* Mellor, Alvarez *v.* Dodgson, [1922] 1 Ch. 312.

196a. Growing crops.]—STEPHENSON *v.* THOMPSON No. 138b, *ante*.

200. *Add. Annotation : Generally*, **Mentd.** *Re* Chaplin & Staffordshire Potteries Waterworks Co.'s Contract, [1922] 2 Ch. 821.

Part V.—Statutory Requirements.

207. *Add. Annotation :*—**Mentd.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

209. *Add. Annotation :*—**Mentd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

213a. —— Substantial accuracy—Payment of loan by cheque.]—Pltf. granted a bill of sale over certain furniture to a money-lender, &, as she was unable to pay him the first instalment when it became due, defts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from defts., & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain defts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on 1882 Act, s. 8, & she contended that the real consideration was the payment off of the money-lender & the release of her furniture from the first bill of sale: *Held:* the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration

PART IV. SECT. 2.

a i. —— *Goods in possession of third party—Claiming possession on his own behalf.*]—*Held:* Bills of Sale Act did not apply.—PRETE *v.* LAUZON & FENSOM, [1923] 3 D. L. R. 1152; 52 O. L. R. 334.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 3.

a i. —— *Chattel mortgage including cut grain—Amount of cut grain not specified.*]—*Held:* mtge. not valid even in part.—NORTH AMERICAN LUMBER CO. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—**CAN.**

197 x. ——.]—Security on grain given to a bank in Oct. 1921, in respect to advances made in the spring of 1920:—*Held:* invalid in respect to 1921 crop as there was no proof 1921 crop was intended as the se & if there was such an agreement made in 1920 as to 1921 crop it was bad as property not then in

v. BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; sk. L. R. 375.—**CAN.**

xi. ——.]—
only intended to operate as
for payment, payable when the crop harvested, was void under R. S. M., 3 (c. 17), s. 33.—HASCALL *v.* ROYAL BANK OF CANADA, [1923] 2 W. W. R. 504; 33 Man. L. R. 230.—**CAN.**

197 xii. ——.]—*Held:* a security on crops to be grown *in futuro* was invalid under R. S. S., 1920 (c. 200), s. 20.—RICHLAND FARM, LTD. *v.* VERMETTE, [1923] 3 W. W. R. 74.—**CAN.**

197 xiii. ——.]—DALTON *v.* EATON, [1924] 1 D. L. R. 493; 1 W. W. R. 246; 18 Sask. L. R. 92.—**CAN.**

i. —— ——.]—PROCTOR *v.* ANDERSON & NORTHERN ELEVATOR CO., LTD., EKMAN & PROCTOR & MALLERY, [1921] 3 W. W. R. 39.—

Pltf.
wheat in A.'s possession. A. wanted some of it for seed. It was agreed that pltf. would purchase the wheat from A. at a price which was equal to the amount of A.'s indebtedness to pltf., & pltf. would immediately re-sell it to A. at a price per bushel which made the total price at about the same as on pltf.'s purchase. This was carried out, & to secure the purchase price pltf. took from A. a seed grain mtge. on the crop to be grown:—*Held:* as A. did not require the whole of the wheat for seed, & as the price fixed had no relation to the value of the wheat but to the debt
by A. to pltf., the actual value
less than the price agreed on, the transaction could not be considered a *bona fide* sale to A., & pltf.'s mtge. was invalid.—LYSCHE *v.* TURNEY (SASK.), [1923] 3 D. L. R. 7; [1923] 2 W. W. R. 876; *revsg.*, [1923] 1 D. L. R. 1198.—**CAN.**

xv. *Binder twine chattel mortgage. To secure price of twine used in*

in the following year over the
of that year, & is entitled to priority.—FENNELL *v.* UNION BANK OF CANADA, [1923] 3 W. W. R. 79. **CAN.**

PART V. SECT. 1, SUB-SECT. 2. B.

bi. — *Mandatement as to currency.*]—The fact that a bill of sale states that the consideration was paid in "lawful of Canada," when in fact it was in paid in United States currency,

FIRST NATIONAL BANK OF MINNEAPOLIS *v.* MANN & CONWAY, [1925] 3 D. L. R. 645; [1925] 2 W. W. R. 325; 19 Sask. L. R. 346.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—

227 vii. ——.]—*Re Esp.* ROYAL BANK OF C.
3 W. W. R. 79; 66 D. L. 831.—**CAN.**

was correctly stated in the second bill of sale, the action failed.—D'USEZ *v.* TRAFFICS & DISCOVERIES, LTD. (1924), 40 T. L. R. 441.

230. *Add. Annotation :*—**Mentd.** Henshall *v.* Widdison (1923), 130 L. T. 607.

237. *Add. Annotation :*—**Distd.** Henshall *v.* Widdison (1923), 130 L. T. 607.

237a. [— — — — —]—Pltf., H., had had a number of betting transactions with deft., W., a bookmaker, since 1918. Pltf. lost various bets & paid his losses by cheques. He won other bets for which he was paid by various cheques. Eventually, pltf. obtained judgment against deft. for £602 10s. Execution was levied at the instance of the judgment creditor whereupon deft.'s wife, claimant in the interpleader proceedings which followed, claimed the goods seized, alleging that they belonged to her because her husband, the judgment debtor, had given her a bill of sale covering them to secure the repayment of a sum of £600 which she had advanced to him. The judgment creditor contended that the bill of sale was bad because it did not truly state the consideration. The bill of sale contained the words "In consideration of a sum of £600 now paid . . ." & the judgment creditor said that the £600 was not paid at the time of making the bill of sale, & therefore was not "now paid," as therein stated, but was paid some time later. It was therefore contended that the bill of sale was not a good bill of sale because the statement that the money was "now paid" was untrue. According to the evidence, deft.'s wife had borrowed the £600 from her mother to help her husband, & she handed the £600 over to her husband to pay his debts at 6 p.m., on the same day that the bill of sale was executed : — *Held :* there was evidence in the present case on which the county ct. judge could find that the £600 was "now paid" within the meaning of the statement in the bill ; the bill of sale was executed, & the money was paid over by claimant at substantially the same time ; the bill was therefore valid & the appeal must be dismissed. HENSHALL *v.* WIDDISON (1923), 130 L. T. 607, D. C.

240. *Add. Annotation :* **Mentd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 791.

273. *Add. Annotation :* **Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

279. *Add. Annotations :* **Refd.** Westen *v.* Fairbridge, [1923] 1 K. B. 667 ; Gordon *v.* Goldstein, [1924] 2 K. B. 779.

282. *Add. Annotation :*—**Consd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

[— — — — —] **Rights under preceding oral agreement.**]—Where, after oral negotiations, a bill of sale of furniture is granted to secure a loan of money with an agreed sum for interest, & the bill is found to be bad, the lender is entitled to recover the principal money lent & interest by virtue of the contract created by the oral negotiations which preceded the granting of the bill of sale.—WILKINS *v.* NEW SAVILLE SECURITIES, LTD. & HAWKINGS (G. F.) & SON (1922), 39 T. L. R. 85.

—**Folld.** Bradford Advance Co. *v.* Ayers, [1924] W. N.

283b. [— — —]—When a bill of sale is void under 1882 Act, s. 9, it is void for all purposes, including the covenant to pay interest. But where a loan has been negotiated purporting to be under a bill of sale which turns out in fact to be void, an action will lie for money had & received, with an obligation to repay the loan & interest at a reasonable rate.—BRADFORD ADVANCE CO., LTD. *v.* AYERS, [1924] W. N. 152.

288. *Add. Annotation :*—**Consd.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

288a. Joint parties—Joint assignment—Of property owned by one party.]—By a bill of sale a husband & wife, who were therein together called "the grantor", purported to assign to the grantee the chattels described in the schedule thereto, which in fact belonged to the wife alone :—*Held :* inasmuch as "the grantor" was not the true owner of the chattels at the time when the bill of sale was executed, except as against the grantor the bill of sale was void under 1882 Act, s. 5.—GORDON *v.* GOLDSTEIN, [1924] 2 K. B. 779 ; 94 L. J. K. B. 21 ; 132 L. T. 155 ; [1924] B. & C. R. 215.

Expld. Gamage *v.* Payne (1925), 42 T. L. R.

289. *Add. Annotations :* **Consd.** Westen *v.* Fairbridge, [1923] 1 K. B. 667 ; **Distd.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

291. *Add. Annotation :* **Mentd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 791.

292. *Add. Annotation :*—**Mentd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

297. *Add. Annotation :*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

299. *Add. Annotation :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

301. *Add. Annotation :*—**Expld. & Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

302. *Add. Annotation :*—**Expld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

302a. [— — — — —] **Other property of industrial society—Charged by debenture.**]—*Re* NORTH WALES PRODUCE & SUPPLY SOCIETY, No. 144a, *ante*.

329. *Add. Annotations :*—**Mentd.** Edwards *v.*

Held :

CAN.

ONT.), [1926] 1 D. L. R. 39.—CAN.

293 a. [— — — — — *Reference to another instrument.*]—

on

instrument as to

to

was null & void.—*Re* RISS, [1923] 3 D. L. R. 986 ; 33 Man. L. R. 153 ; [1923] 1 W. W. R. 1190 ; 3 C. B. R. 828.—CAN.

q i. [— — —]—When a mtge. of a car was made by H., he was owner of only undivided half-share in the car :—

not with standing the consent of his er to the mtge., it was valid only to the extent of H.'s half share, the fact that shortly after giving the security H. became the s not operate retrospectively Chattels Transfer Act, s. 21.— r. R., [1921] N. Z. L. R. 2.

Motor Union Insce., [1922] 2 K. B. 249; *Re* A Bankruptcy Notice, [1924] 2 Ch. 76; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd *v.* Goukasson (1924), 40 T. L. R. 837; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

352. *Add. Annotation:*—**Mentd.** Henshall *v.* Widdison (1923), 130 L. T. 607.

372. *Add. Annotation:*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

409. *Add. Annotation:*—**Mentd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

417. *Add. Annotation:*—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 791.

418. *Add. Annotation:* **Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 791.

420. *Add. Annotation:* **Apld.** Herbert's Trustee *v.* Higgins, [1926] Ch. 791.

420a. ——— **"Cows, nineteen short-horns & one Jersey cow."** *Held:* farm stock described in the schedule to a bill of sale as above were specifically described within 1882 Act, s. 4.— HERBERT'S TRUSTEE *v.* HIGGINS, [1926] Ch. 791; 95 L. J. Ch. 303; 135 L. T. 321; 42 T. L. R. 525; 70 Sol. Jo. 708; B. & C. R. 26.

423. *Add. Annotation:* **Apld.** Herbert's Trustee *v.* Higgins, [1926] Ch. 791.

434. *Add. Annotation:*—**Mentd.** Gordon *v.* Goldstein, [1921] 2 K. B. 770.

444. *Add. Annotation:*—**Refd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

452. *Add. Annotation:* **Mentd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 791.

495. *Add. Annotation:* **Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

498. *Add. Annotation:* **Consd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

552. *Add. Annotation:* **Expld.** Gordon *v.* Goldstein, [1921] 2 K. B. 779.

563. *Add. Annotation:* **Mentd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 791.

574. *Add. Annotation:* **Mentd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

575. *Add. Annotation:* **Mentd.** Harrods *v.* Stanton, [1923] 1 K. B. 516.

PART V. SECT. 2, SUB-SECT. 6.—G.

pi. ——— *Rights of grantor.*] —The implication its by way of security stock which, while al of stock without the grantee's consent, permits a sale by the grantor in the ordinary course of business, provided that the number of stock is not thereby reduced below the number stated in the security, does not is a condition of a valid sale that the proceeds be paid to grantee. NATIONAL BANK OF NEW ZEALAND *v.* DAGGETY & Co., [1925] N. Z. L. R. 250. **N.Z.**

PART V. SECT. 2, SUB-SECT. 8.—B.

415 xl. ———.] BANQUE D'HOCHELAGA *v.* HAYDEN & GILLESPIE ELEVATOR Co., [1922] 1 W. W. R. 1051; 63 D. L. R. 511; 17 Alta. L. R. 277.—**CAN.**

n (p. 73) **i.** ——— *"Issue of" named "animal."*] —It is not a sufficient description to describe an animal as the r animal when he date of the mtge. its dam for ure.—RESER *v.* BLWLEY, [1922] 1 W. W. R. 1134; 65 D. L. R. 55; 17 Alta. L. R. 548.—**CAN.**

k (p. 74) **i.** ———.] KING *v.* DOMINION BANK, [1920] 3 W. W. R. 295.—**CAN.**

PART V. SECT. 3.

pi. ——— *Reference in schedule to earlier mortgage.*] —OTAGO FARMERS ssoc'n. OF NEW ZEAr. 155 N. Z. L. R. 482.—**N.Z.**

PART V. SECT. 4, SUB-SECT. 1.

486 i. *Non-compliance with statutory requirements—How far mortgage valid.*] —Bills of Sale Act, N. B. 1903 (c. 112), s. 5, affords no protection for a mtge. not executed & attested in accordance with s. 3 subsequent to another mtge. also not in accordance with s. 3. Such prior mtge. is good as between the parties & those who are not protected by s. 5.—MEADE *v.* DESCHENE, [1923] 2 D. L. R. 339.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

i. ———.]—Chattel mtges. unregisan agreement against a mtgee. of the chattels under a distress under an attornment clause in his mtge. McDOUGALL & STODART, LTD. *v.* MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 361; 51 D. L. R. 309.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

e i. ——— *Declaration as to bona fides sworn six days before execution.*] *Held:* mtge. null & void as against the trustee in bkpcy. of the mtgor. *Re* GIBBONS, [1921] 3 D. L. R. 619; 5 C. B. R. 16.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.

492 ii. ———.] *Held:* a document not a "true copy" was null & void against purchasers.—COMMERCIAL CREDIT Co. OF CANADA, LTD. *v.* FULTON BROTHERS, [1 L. J. P. C.] T. L. R. 684; —**CAN.**

PART V. SECT. 5, SUB-SECT. 4.—A.

o (p.) **i.** ——— *Bill for future advr.*

. R. 1.—**CAN.**

o (p. 86) **ii.** *Part of goods delivered.*] —*Held:* bill valid where there was an immediate delivery followed by an ssession, & where had been sold & the proceeds were in the sheriff's hands. KIPPAN *v.* McCAW, [1924] 1 D. L. R. 601; 1 W. W. R. 65; 34 Man. L. R. 61.—**CAN.**

m (p. 86) **i.** ——— *Omission of statement as to knowledge.*] CRAIG, ...) & Co., LTD. *v.* GILLESPIE, 511.—**CAN.**

(taking mortgage—Local manager—Without written authority.) — *Held:* sufficient.—*Re* GAUDREAU, *Ex p.* ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79; 66 D. L. R. 831.—**CAN.**

506 v a. ———.] —While it is very desirable, the absence of date is not fatal, as the Ordinance does not prescribe any form of affidavit.—BANQUE D'HOCHELAGA *v.* HAYDEN & GILLESPIE ELEVATOR Co., [1922] 1 W. W. R. 1051; 63 D. L. R. 514; 17 Alta. L. R. 277.—**CAN.**

PART V. SECT. 5, SUB-SECT. 4.—B

Ex p. ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79; 66 D. L. R. 831.—**CAN.**

g (p. 88) **i.** *Necessity for affidavit Bill executed under corporate seal of*

g (p. 88) **ii.** & C. DAVIDSON *v.* Hoad, [1926] 3 W. W. R. 67.—**CAN.**

k (p. 88) **i.** ———]

The absence of the date of execut of a chattel mtge. from the affidavit of the witness renders the mtge. invalid.—NORTH AMERICAN LUMBER Co., LTD. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 318; 1 Sask. L. R. 375.—**CAN.**

k (p. 88) **ii** ———] *Re* LAWSON, *Ex p.* SHANKLY, [1925] 1 D. L. R. 1100.—**CAN.**

form in the statute, or the mtge. is void against creditors of mtgor. *In re* BAUER, *Ex p.* JAMIESON, [1921] 4 D. L. R. 789, 5 C. B. R. 184.—**CAN.**

p (p. 89) **i.** *of material fact.*] —TOR *v.* ANDERSON & NORTHERN ELEVATOR Co., LTD., ERMAN & PROCTOR & MALLORY, [1921] 3 W. W. R. 39.—**CAN.**

PART V. SECT. 5, SUB-SECT. 5.—D.

596 iii. *Not in mortgage Stated in affidavit;* —The of the address of the agent of in the affidavit of *bona fides* is nt to satisfy the statutory requirements, although mtgee.'s address is not stated in the mtge. itself.—IMPERIAL LUMBER Yards, LTD. *v.* FERGUSON, COCKSHUTT PLOW Co., CLAIMANT, [1922] 2 W. W. R. 33; 65 D. L. R. 708.—**CAN.**

PART V. SECT. 5, SUB-SECT. 8.

1 (p. 101) ...ages., during the currency of a mtge., & before renewal becomes necessary, takes actual possession of the goods & makes no sale or change of title, the mtge. remains valid & effective without renewal.—McCANN *v.* Cook, [1922] 3 W. W. R. 463, 70 D. L. R. 25.—**CAN.**

1 (p. 101) ii. *Ex p.* BLACKBURN, *Ex p.* MOFFATT, [1925] 2 D. L. R. 1296; 5 C. B. R. 695.—**CAN.**

n (p.) *to* NATHAN ... *Ex p.* HAM D. L. R. 1078.—**CAN.**

t (p. 102) **i.** ... *filed after proper time.*] —*Held:*

Part VI.—Avoidance.

648. *Add. Annotation :*—**Consd.** Shears *v.* Jones, [1922] 2 Ch. 802.

663. *Add. Annotation :*—**Mentd.** Stephenson *v.* Thompson, [1924] 2 K. B. 240.

672. *Add. Annotations :*—**Expld. & Apld.** French *v.* Gething, [1922] 1 K. B. 236. **Mentd.** Canvey Island Comrs. *v.* Preedy, [1922] 1

673. *Add. Annotation :* **Consd.** French *v.* G [1922] 1 K. B. 236.

673a. ——— ——.]—By a post-nuptial deed in May, 1914, a husband gave his wife certain household furniture in the house in which the husband & wife lived together. The furniture remained in the house, which continued to be occupied by the husband & wife. The deed was not registered under 1878 Act. Execution creditors under a judgment recovered in 1920 against the husband levied execution at the house. The wife claimed the furniture. In an interpleader issue between the wife & the execution creditors :—*Held :* the furniture was not in the possession or apparent possession of the husband within 1878 Act, s. 8, nor in his order & disposition or reputed ownership within Married Women's Property Act, 1882 (c. 75), s. 10. FRENCH *v.* GETHING, [1922] 1 K. B. 236; 91 L. J. K. B. 276; 126 L. T. 391; 38 T. L. R. 77; 66 Sol. Jo. 140; [1922] B. & C. R. 30, C. A.

678. *Add. Annotation :* **Consd.** French *v.* Gething, (1921), 91 L. J. K. B. 276.

689. *Add. Annotation :* **Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

695. *Add. Annotations :*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431; *Re* Wait, [1926] Ch. 962. **Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

704. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

706. *Add. Annotations :*—**Consd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 560. **Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

708a. —— —— ——.]—The grantor of a bill of sale described the goods in the schedule thereto as his own, though, in fact, the true owner was pltf., his wife. The bill of sale was given as security for a loan to the grantor from deft., & at the time of its execution the wife made a statutory declaration that the goods were those of her husband. One firm of solrs. acted for all the parties in this transaction. On a claim by the wife to the goods : *Held :* she was estopped from denying that the goods were those of her husband, & thus showing that the bill of sale was void as against deft. under 1882 Act, s. 5.—WESTEN *v.* FAIRBRIDGE, [1923] 1 K. B. 667; 92 L. J. K. B. 577; 129 L. T. 221; 67 Sol. Jo. 403; [1923] B. & C. R. 86.

709. *Add. Annotation :*—**Mentd.** Waller *v.* Thomas, [1921], 1 K. B. 541.

710a. —— —— **Voluntary deed of gift by husband — Declared void after date of bill.**]—A man who was in debt executed a deed of gift of his furniture in favour of his wife, who thereafter granted a bill of sale upon the furniture to a person who took for value & without notice. Subsequently the deed of gift was declared void under 13 Eliz. c. 5 as being in fraud of creditors. The furniture having been taken in execution by a judgment creditor the bill of sale holder claimed the furniture under the bill of sale. Interpleader proceedings were instituted in which the execution creditor alleged that the bill of sale was void under

was void : *Re* NATHAN (CRYSTAL, HAWTHORNE), [1925] 4 D. L. R. 1 CAN.

616
r. COSTE, [1922] 3 W. W. R. 46 D. L. R. 2 CAN.

616 iv. ——— ——— ——.] —M ALD *v.* CAREY, [1923] 3 D. L. R. 2 W. W. R. 972.—CAN.

v. .]—W an of a r of of are In c osition should not be taken to have een bettered in any way thereby.— *Re* BELL'S ESTATE, [1924] 4 D. L. R. 476; 3 W. W. R. 475. CAN.

vi. ——— ——— *From what date for subsequent proceeds fixed.*]—McCANN *v.* COSTE, [1922] 3 W. W. R. 465; 70 D. L. R. 25.—CAN.

616 viii. ——— ——— .]—Where deft. purchased goods from mtgor., paying full value & knew of the mtge., but considered he was entitled as a matter of law to rely upon mtgee's failure to) :—*Held :* deft. was not a purchase in good faith.
BANK OF (*v.*)
L. R. 368; [1923] 1 W. W.]
CAN.

PART VI. SECT. 2.

v. HOME, [1920] 3 W. W. R. 67.—CAN.

r (p. 107) ii. ——— ———.]—The creditors entitled to the protection of Chattel Mtge. Act, R. S. S., 1920 (c. 200), are all creditors of the seller, & not merely those whose been prosecuted to judgment NATIONAL BANK OF MINNEAPOLIS *v.* MANN & CONWAY, [1925] 3 D. L. R. 618; [1925] 2 W. W. R. 525; 19 Sask. L. R. 546.—CAN.

to
MICKELSON *v.*
TON CO., [1923] 3 W. W. R. 843.
CAN.

t (p. ——— *Before judgment creditor.*]—*Held :* to maintain her *v.* SEXSMITH , 64 D. L. R. 373; 50 O. L. R. 8.—CAN.

t (p. 109) ii. ——— *Subsequent*

a bill of not be per- of the

who had already seized the execution.—*Re* SCRAGG, [1925] 1 D. L. R. 240; [1924] 3 W. W. R. CAN.

d (p. 109) i. .
OTTAWA CAR MANUFACTURING CO. (1921), 64 D. L. R. 333; 50 O. L. R.

. 109) i. —

lien
TARD, [1923] 2 D. L. R. 922; 4 C. B. R. 140; *affd.*, 24 O. W. N. 5 —CAN.

ak. *Against principal—Agent granting bill without authority.*]—ALLEN *v.* NORFOLK CO-OPERATIVE DAIRY CO., LTD., [1923] N. Z. L. R. 715.—N.Z.

PART VI. SECT. 3, SUB-SECT. 1.—A.

h (p. 110) i. *Chattels*
.]—A bill of
under the statute cannot be made valid by any subsequent possession taken by the bargainee.—KIPPAN *v.* McCAW, [1924] 1 D. L. R. 601; 1 W. W. R. 65; 34 Man. L. R. 64.—CAN.

b (p. 114) i. ——— ———.]—YO MAGEE, [1924] 3 D. L. R. 426; 2 W. W. R. 816; 20 Alta. L. R. 431.—CAN.

PART VI. SECT. 3, SUB-SECT. 1.—B.

(p. 116) i. — he of by Ordinance, C.

LUMBER CO. *v.* ALBERTA FISH CO., 3 W. W. R. 619.—CAN.

PART VI. SECT. 3, SUB-SECT. 2.—A.

636 xi. ———.]—LIQUID Co. *v.* ROUNTREE, [1924] 1 D. L. 54 O. L. R. 75.—CAN.

1882 Act, s. 5, on the ground that the grantor was not the "true owner" of the furniture at the time of the execution of the bill of sale:—*Held:* until the deed of gift was set aside the donee thereunder was the "true owner" of the furniture, & as she had conveyed the furniture to a purchaser for value without notice before the deed of gift was set aside, claimant obtained a good title under the bill of sale.—HARRODS, LTD. v. STANTON, [1923] 1 K. B. 516; 92 L. J. K. B. 403; 128 L. T. 685; [1923] B. & C. R. 70, D. C.

718. *Add. Annotation:*—**Reld.** Wilkins v. New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

719. *Add. Annotation:*—**Expld. & Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

722. *Add. Annotations:*—**Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76; Huddersfield Fine Worsteds v. Todd (1925), 42 T. L. R. 52. **Refd.** Edwards v. Motor Union Insce., [1922] 2 K. B. 249; Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd v. Goukassow (1921), 40 T. L. R.

723a. **Owner - Statutory declaration that goods belonged to grantor.**]—WESTEN v. FAIRBRIDGE, No. 708a, *ante*.

Part VII.—Rights and Liabilities of Parties.

797. *Add. Annotation:*—**Mentd.** *Re* Mellor, Alvarez v. Dodgson, [1922] 1 Ch. 312.

830a. —— ——.]—In June, 1921, a bill of sale, which was duly registered, was given to secure £400 with interest at 24 per cent. *per annum*. An agreement was afterwards made by which the present claimant agreed with the grantor of the bill of sale to pay to the grantee £150 then owing thereon & to lend to the grantor a further sum of £550 upon having the payment of these sums, making together £1,000 with interest thereon, secured by a transfer of the £450 then owing on the bill of sale & the securities for the same. Subsequently, in Nov. 1921, a deed was made between the parties to the bill of sale & claimant, by which, in pursuance of the agreement & in consideration of £450 then paid to the grantee of the bill of sale by claimant, the grantee assigned to claimant the principal & interest secured by the bill of sale & all securities therefor, & the grantee also at the request of the grantor assigned to claimant the goods comprised in the bill of sale free from all equity of redemption under the bill of sale, but subject to a proviso for redemption in the deed, & the grantor covenanted with claimant to pay to her on a specified date the £1,000 with interest at 6 per cent. *per annum*. The latter deed was not registered as a bill of sale under the Bills of Sale Acts:—*Held:* the deed was not a "transfer or assignment" of the registered bill of sale within 1878 Act, s. 10, but was a new bill of sale which itself required to be registered &, therefore, claimant was not entitled to rely

PART VI. SECT. 6, SUB-SECT. 2.

740 i. *Second bill to cure invalidity Second bill valid.*] Where goods have been sold *bona fide* & a bill of sale given which is invalid because it was

buyer a f sale, even after tion dating f of first, which

in a position to is, it will entitle the buyer to f the creditors. F NK OF MINNEAPOL WAY, [1925] 3 D. f R. 2 W. W. R. 525; 19 Sask. L. 546; *revsg.* [1925] 1 W. W. R. 5. CAN.

PART VII. SECT. 2, SUB-SECT. 2.—B.

d f. *to cancel* it was of

a under a collateral chattel mtge.: he right to seize under the not curtailed by reason of

Cook v. Orr, [1924] 1 D. L. R. 920; 1 W. W. R. 1027.—CAN.

PART VII. SECT. 2, SUB-SECT. 3.

v. EXTRA- [1922] 2 W. W. R. 974; 67 L. 657.— CAN.

PART VII. SECT. 2, SUB-SECT. 4.—A. (b).

802 iii. —— ——.]—Where a trader a chattel mtge. upon his & it is

of the mtge., or by necessary ation, that the intention of the parties is that the mtgor. shall remain in possession of the stock-in-trade mortgaged, & carry on business therewith in the ordinary course of trade, a purchaser from him of any of the mortgaged goods, *bona fide*, & in the ordinary course of business, will obtain title to such goods freed from the mtge.; but if the mtge. on its true construction does not contemplate that the mtgor. is to be at liberty to dispose of the mortgaged goods in the ordinary course of his trade, a purchaser of such mortgaged goods will hold the same subject to the mtge.

CHEWAN CO-OPERATIVE ELE- [illegible] CO., LTD. v. CANADIAN [illegible] W. W. R. 910. CAN.

810 i a. —— —— *By bill o* a bill of sale, duly to the f D. executed in favour of deft. bill of sale over certain furni ture acquired since the first sale. Upon the sale of these ture the Crown claimed the bill on the ground that upon ion they became subject y of the Crown. Deft. aware that the Crown held a el security, but believed it com- l other chattels than those com- d in his security:—*Held:* the deft. a good title at law for value & without : of the special provision in the title; of

to constructive notice of its contents. R. v. CANTERBURY FARMERS CO-OPERATIVE A N. Z. L. R. 51.

PART VII. SECT. 2, SUB-SECT. 4.—B.

814 ii. — *After removal of goods by grantor.*] Deft. leased a house to P., who gave a bill of sale of goods to plff. & received from him a lease of the goods for two years. Before a quarter's rent came due, P. moved the goods off the premises; deft. followed them & distrained for the rent; plff. gave notice that he was owner of the goods & forbade the sale, but deft., believing the bill of sale to be fraudulent, sold the goods under the distress. *Held* deft. was liable. PRINCE v. MILLIGAN (1871), N. B. Dig. 282. CAN.

PART VII. SECT. 3.

a i. .] In order for an assignee of a chattel mtge. to recover the debt by him against mtgor., his assignment must be absolute & in writing notice thereof in wri must be

W. W. R. 561.—CAN.

b i. —.] The assig of a bill of le & lien notes, which in effect a attel mtge., can than the s must hold subject to liable in agee for any unwarranted sale by of the chattels covered by the bill of & lien n orms, L. 4 D. L. W. CAN.

upon the registered bill of sale as assignee thereof.—MARSHALL & SNELGROVE, LTD. *v.* GOWER, [1923] 1 K. B. 356; 92 L. J. K. B. 499; 128 L. T. 829; [1923] B. & C. R. 81, D. C.

831. *Add. Annotation :*—**Consd.** Marshall & S *v.* K. B. 35

834. *Add. Annotation :*—**Mentd.** French *v.* (1921), 91 L. J. K. B. 276.

836. *Add. Annotation :*—**Mentd.** Waller *v.* Thomas, [1921] 1 K. B. 541.

846. *Add. Annotation :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

PART VII. SECT. 4.

i. — *Chattels taken by mortgagee.*]—TINANT *v.* SIMON (1922), 67 D. L. R. 773.—**CAN.**

BONDS.

Part VII.—Performance or Breach of Condition.

536. *Citations:*—For "BROWN'S CASE (1550), Benl. 8; Ben. & D. 35; 73 E. R. 937," read "BROWN'S CASE (1500), cited Benl. 8; Ben. & D. 35; 73 E. R. 937."

547. *Add. Annotation:* **Refd.** Canteen Naval Provisioning v. Russian Soviet Naptha Export Agency, [1927] 2 K. B. 172.

Part VIII.—Amount Recoverable on Breach of Condition.

577. *Add. Annotation:*—**Mentd.** *Re* Eyre-Williams, Williams v. Williams, [1923] 2 Ch. 59

Part IX. Assignment.

680. *Add. Annotation:*—**Apld.** *Re* City Life Assce., [1926] 1

Part X.—Discharge.

700. *Add. Citation:* Cited 6 Co. Rep. 44 b.
Add. Annotation: **Refd.** Enes Case (1627), Litt. 58.

712. *Add. Annotation:* **Refd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

749. *Add. Annotation:* **Mentd.** *Re* A Bank Notice, [1924] 2 Ch. 46

803. *Add. Annotation:* **Mentd.** The I [1924] P. 140.

814. *Add. Annotation:* **Mentd.** *Re* Eyre-Williams, Williams v. Williams, [1923] 2 Ch. 533.

Part XII.—Actions on Bonds.

953. *Add. Annotation:*—**Refd.** Davey v. Robinson, [1925] 1 K. B. 503

PART XII. SECT. 2. ... MINION INVESTMENT CO. v. M'MULLEN *Held* ... for applying to ... an action on a bond ... and same guaranteeing the payment ... a smaller sum.—WESTERN ... PART XII. SECT. 3, SUB-SECT. 3. **sm.** *Extension of time for payment ... consideration of higher rate of interest* ... MINION INVESTMENT CO. v. M'MULLEN, [1925] 1 ... CAN

BOUNDARIES, FENCES AND PARTY-WALLS.

Part I.—Boundaries.

8. *Add. Citation :* -109 L. T. 820.

10. *Add. Annotation :- Generally*, **Mentd.** British Controlled Oilfields *v.* Stagg (1922), 127

20. *Add. Annotation :* **Mentd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee, [1924] 1 K. B. 171.

39. *Add. Annotation :*—**Mentd.** British Controlled Oilfields *v.* Stagg (1922), 127 L. T. 209.

67. *Add. Annotation :*—**Mentd.** Brighton & Hove General Gas Co. *v.* Hove Bungalows (1923), 93 L. J. Ch. 197.

94. *Add. Annotations :*—**Consd.** Brighton & Hove General Gas Co. *v.* Hove Bungalows, [1924] 1 Ch. 372. **Mentd.** Barwick *v.* S. E. & C. Ry., [1921] 1 K. B. 187.

Part II.—Fences.

131. *Add. Annotations :* **Mentd.** Michael *v.* Phillips (1923), 130 L. T. 142 ; Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

Add. Annotations : **Mentd.** Bromley *v.* Mercer, [1922] 2 K. B. 126 ; Fairman *v.* Perpetual Investment Bldg. Soc., [1923] A. C. 74.

145. *Add. Annotations :* -*As to* (1) **Apld.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671.
Mentd. Edwards *v.* Birmingham N
[1924] 1 K. B. 341 ; Smith *v.* G. W. Ry. (1926), 135 L. T. 112.

146. *Add. Annotation :* **Refd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44.

148. *Add. Annotation :* **Distd.** Sack *v.* Jones

155. *Add. Annotations :* **Consd.** Bromley *v.* Mercer, [1922] 2 K. B. 126. **Refd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44. **Mentd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

163. *Add. Annotations :* **Consd.** Hardy *v.* C. L. Ry. (1920), 124 L. T. 136 ; Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44. **Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253. **Mentd.** Fairman *v.* Perpetual Investment Bldg. Soc., [1923] A. C. 74 ; Sutcliffe *v.* Clients Investments Co., [1924] 2 K. B. 746 ; Harnett *v.* Fisher (1926), 135 L. T. 724.

Add. Annotations : **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746. **Mentd.** Fairman *v.* Perpetual Investment Bldg. Soc., [1923] A. C. 74.

169. *Add. Annotation :* **Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671.

171. *Add. Annotations :* **Folld.** Canvey Island Comrs. *v.* Preedy, [1922] 1 Ch. 179. **Refd.** ghton & Hove Gas Co. *v.* Hove 923), 88 J. P. 61.

171a. —— ——.] —Pltfs. were incorporated under Canvey Island (Sea Defences) Act, 1883, for protecting Canvey Island from inundation by the sea. They succeeded former comrs. appointed by an Act of 1792 (32 Geo. 3, c. 31), which contained a power for these comrs. under s. 13 to erect a new sea wall further inward, on giving compensation to the owner whose land was taken for this purpose. In 1813 the new wall was built, & £150 given as compensation to the owner of the land taken. Under the Act of 1883 the property & rights of the former comrs. were vested in pltfs. who had power under that Act to hold lands. Pltfs. claimed to be owners in possession of the foreshore between the new & the old wall. Deft. claimed under a conveyance of Apr. 1919 to be the freeholder in possession of a strip of land comprising part of this foreshore, & to be entitled as of right to excavate & remove shells & other drift even although, as pltfs. alleged, it deprived the new wall of protection & support, & exposed it to injury by the action of wind & water. The greater risk to the wall in consequence of deft.'s action was established by the evidence. In an action by pltfs. to restrain deft. from so removing the drift, & from trespassing on their land :—*Held :* (1) assuming the strip in question to be deft.'s freehold, pltfs. were still entitled to an injunction restraining him from so removing drift from the strip as to expose their wall & works & the lands protected thereby to greater risk of inundations of the sea ; (2) pltfs. had established their statutory title under the Acts of 1792 & 1883 to the whole of the land taken & set out pursuant to s. 13 of the first Act, & had exercised specific acts of ownership over the foreshore : the possession of pltfs. & of deft. being at most doubtful or equivocal the law d possession to the title ; deft.,

PART I. SECT. 1, SUB-SECT.

m (p. r. Whit- . R. 879 CAN.

t. r. B. R. 324.— CAN.

r. Met- 70 D. L. R. CAN.

D. L. R. 374.—CAN.

PART I. SECT. 1, SUB-SECT. 3.

r (p. 267 i. *missing.*]—K.A 3 W. W. R. 102 ; 68 D. L. R. 71 CAN.

ll. — — — of the at one time of a c mound, to the rules a proper way of the] 2 W. W. R. 10 D. L. R. . L. R.

therefore, was a trespasser, & must be restrained from excavating or removing stones, shingle, shell or soil from the particular strip of foreshore & from otherwise trespassing on same.—CANVEY ISLAND COMRS. *v.* PREEDY, [1922] 1 Ch. 179; 91 L. J. Ch. 203; 126 L. T. 445; 86 J. P. 21; 66 Sol. Jo. 182; 20 L. G. R. 125.

204. [illegible] **Refd.** [illegible] Proctor, [1923] A. C. 253. [illegible] :—**Distd.** S

[illegible] case add, "Power of commissioners to [illegible] repair of fences, *see* COMMONS.

Part III.—Party-Walls.

240. *Add. Annotation :—As to* (2) **Refd.** Sack *v.* Jones, [1925] Ch. 235.

249. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

250. *Add. Annotation :*—**Apld.** Sack *v.* Jones, [1925] Ch. 235.

251. *Add. Annotations :*—**Apld.** Sack *v.* Jones, [1925] Ch. 235; Simpson *v.* Weber (1925), 133 L. T. 46. **Mentd.** Hansford *v.* Jago, [1921] 1 Ch. 322.

251a. Right of support—By adjoining house.]—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with [illegible] rights of support. Pltf. [illegible] to lack of repair & under- [illegible]'s allegations had [illegible] 235; 91 L. J. Ch.

257. *Add.* [illegible] Re [illegible] Ilford U. C. *v.* [illegible] 1925 1 K. B. 67

310. *Add.* [illegible] 1. [illegible] (2) **Refd.** Sack *v.* [illegible] Jones, 1925 Ch. 235.

Part IV.—Evidence of Boundaries.

318. *Add. Annotation :*—**Mentd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

320. *Add. Annotation :*—**Mentd.** Belton *v.* Bass, [illegible]iffe & Gretton, [1922] 2 Ch. 4

323. *[illegible] dations :*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456. **Mentd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

332. *Add. Annotation :*—**Refd.** British Thomson-Houston Co. *v.* British Insulated & Helsby Cables, [1924] 2 Ch. 160.

339. *Add. Annotation :*—**Mentd.** British Thomson-[illegible] Co. *v.* British Insulated & Helsby Cables, [1924] 2 Ch.

343. *Add. Annotation :*—*As to* (3) **Consd.** Stoney [illegible] 1. British The [illegible] [1924] 2 Ch. 160

359. [illegible] **Apld.** Stoney *v.* [illegible] Bourne R. C. A. [illegible] 1920), 93 L. J. Ch.

402. [illegible] Consd. Stoney *v.* East- [illegible] R. C. A. [illegible] (1920), 135 L. T. 281.

416. *Add. Annotation :* Mentd. Falcon *v.* Famous Players Film Co. [illegible] 42 T. L. R. 91.

[illegible] *v.* Mc- [illegible] Crea [illegible] 92

PART II. SECT. 2. SUB-SECT. 4.

an. *Forest reserve.*]—It is no defence to an action for recovery of a penalty from the owner of stock grazing on a forest reserve without a permit, that the reserve was not enclosed by a "lawful fence" as defined in [illegible] Fence Ordinance.—MINISTER OF INTERIOR FOR CANADA *v.* NELSON, [illegible] 1 W. W. R. 129.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3. C. (b).

1. — *Wall built & used only by adjoining owner.*]—*Held :* [illegible] answerable, as the injury was the direct result of negligence in the original construction of the wall.—MCQUILLAN [illegible] RYAN (1921), 64 D. L. R. 472; 5 O. L. R. 337.—**CAN.**

Party [illegible] *nt of liability.*]—[illegible] ONE, LTD. *v.* [illegible] FINLAYSON *v.* CC. [illegible] MILLS, [1923] 4 D. L. R. 1110; O. L. R. [illegible] —**CAN.**

PART IV. SECT. 1.

[illegible] *[illegible] to accept evi- [illegible] first*

V. R. 706.

CAN.

[illegible] *v.* [illegible] CAN.

BUILDING CONTRACTS, ENGINEERS AND ARCHITECTS.

Part II.—The Contract.

18. *Add. Annotation :*—**Refd.** Boot (London) *v.* Uttoxeter U. D. C. (1924), 88 J. P. 118.

20. *Add. Annotations :*—**Consd.** *Re* Meyrick's Settlmt., Meyrick *v.* Meyrick, [1921] 1 Ch. 311. **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

21. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

34. *Add. Annotation :*—**Refd.** Kelantan Government *v.* Duff Development Co., [1923] A. C.

39. *l. Annotation :*—**Distd.** A.-G. *v.* Denby,

47. *l. Annotation :*—**Refd.** British & Foreign Marine Insce. *v.* Gaunt, [1921] 2 A. C. 41.

49. *Add. Annotation :*—**Mentd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

51. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

56. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

59. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

70. *Add. Annotation :*—**Consd.** Alexander *v.* Webber, [1922] 1 K. B. 642.

Part III.—Certificates.

83. *Add. Annotation :*—**Mentd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

Part IV.—Price.

129. *Add. Annotations :*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455. **Mentd.** Isaacs *v.* McAllum, [1921] 3 K. B. 377.

129a. — — **Work abandoned.**]—SMALL & SONS, LTD. *v.* MIDDLESEX REAL ESTATES, LTD., [1921] W. N. 215.

132. *Add. Annotation :*—**Refd.** Colley *v.* Overseas Exporters, [1921] 3 K. B. 302.

145. *Add. Annotation :*—**Refd.** Moriarty *v.* Regent's Garage Co., [1921] 1 K. B. 423.

147a. — — —.]—SMALL & SONS, LTD. *v.* MIDDLESEX REAL ESTATES, LTD., [1921] W. N. 215.

PART II. SECT. 2, SUB-SECT. 1.

st. *Repugnant provisions.*]— A provision for payment on the basis of cost plus a percentage if the actual cost is more or less than the contract price is repugnant where the contractor has made an absolute covenant to do the work & furnish the material for a definite sum. Orr *v.* Fournes (1921), 62 S. C. R. 1; 59 D. L. R. 155. **CAN.**

PART II. SECT. 2, SUB-SECT. 3.

sw. *Contract to put old houses " in*

to their

for to

permitted. HOUSE REPAIR & SERVICE Co., LTD. *v.* MILLER (1921), 64 D. L. R. 115; 49 O. L. R. 205.— **CAN.**

PART II. SECT. 3, SUB-SECT. 2. C.

52 iii. — — —.]— Where the

at that it was ent that the ed for could not be completed within the time fixed, but there was no application for n nor un r of for

the obligation of the work, additions, within the fixed.— GRIER *v.* GEORGAS (1923 O. L. R. 580.— **CAN.**

PART III. SECT. 1.

73 xxvii. — —.]— DIXON *v.* SOUTH AUSTRALIAN RAILWAYS CO. 34 C. L. R. 71.— **AUS.**

84 i. — — — *Certificate given.*]— *Held :* the issue of the certifier's certificate was not a condition precedent to the right of the contractor to recover payment.— HERS CONSTRUCTION CO. *v.* R.,] 2 D. L. R. 582.— **CAN.**

] *Held :* a final not a condition precede to ng of an action by the t

D. L.

CAN.

PART III. SECT. 3, SUB-SECT. 2.—A.

102 iv. — — — —.]— D'AMOURS *v.* TROIS-PISTOLES, (1924) 4 D. L. R. 501. **CAN.**

PART IV. SECT. 1.

— Co. *v.* SHAW,

3 D. L. R. 893; 3 W. W. R. 301.— **CAN.**

sa. *Percentage on cost How calculated.*]— A contract e into between pltfs. defts. for the construction of a v sel by pltfs. for defts. provided that defts. were to pay pltfs. an sum for the use of their plant, sting of yard, sheds, above c, in addition ten per which cost of all labour & entered into the construction of the vessel :— *Held :* the ten per cent. must be restricted to labour & material supplied by pltfs. & should not be extended to include engines, tanks, & other articles which were provided by defts. & with the supplying of which pltfs. had to do.— BOEHNER *v.* BA 55 N. S. R. 325.— **CAN.**

PART IV. SECT. 2.

135 i. *General rule.*]—F R *v.* COX 921), 54 N. S. R. 226; 57 D. L. R.

h (p. 367) l. - SPEIRS, LTD. *v.* S. C. 428.—**SCOT.**

146 iii. WILLIAMS *v.* LTD., [1923] 4 D. L. R. 5, 3 W. W. R. 1624.— **CAN.**

Part V. — Payment.

171. ***Add. Annotation :*—Consd.** *Re* Mahmoud & Ispahani, [1921] 2 K. B. 716.

Part VI.—Alterations, Additions and Omissions.

213. ***Add. Annotation :*—Mentd. British** & Foreign Marine Insce. Co. v. Gaunt, [1921] 2 A. C. 41

Part VII.—Maintenance and Defect Clauses.

222. ***Add. Annotation :*—Consd.** Murphy v. Healy, [1922] 1 A. C. 369.

Part VIII.—Breach of the Contract.

230. *Add. Annotation :*—**Mentd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

230a. —— Excess of cost of completion over contract price.]—By a contract in writing dated May 12, 1916, deft. agreed to build for pltf. a house, subject to the conditions set forth in the schedule thereto, for the sum of £1,900. The conditions provided (*inter alia*) that deft. should begin the works immediately after possession of the site was given to him, & should regularly proceed with & complete the same within six months after the date of the plans being passed by the local authority, & that if deft. should suspend the works or should not proceed with them with due diligence, pltf. by his architect should have power to give notice to deft. requiring him to proceed, & on failure of deft. to comply with such notice for thirty days pltf. should be entitled to enter upon & take possession of the works & site & employ any other person to complete the works. On July 10, 1916, the plans were duly passed. On July 14, 1916, an order was made by the Minister of Munitions under the powers of the Defence of the Realm (Consolidation) Regulations, 1914, which provided that on & after July 20, 1916, no person should without licence from the Minister of Munitions commence or carry on any building or construction work. On July 21 deft. applied for a licence to proceed, & continued to work fairly well until Aug. 12, when he ceased to proceed with due diligence with the deliberate intention, as the ct. held, of ensuring that the licence should be refused & that he should thereby be enabled to put an end to the contract. On Sept. 9 pltf.'s architect gave him thirty days' notice to proceed with the works. On Sept. 30, before the expiration of the notice, the Minister of Munitions refused to grant the licence to proceed. In an action by pltf. for damages for breach of contract: *Held:* deft. could not take advantage of the intervention of the Minister of Munitions, which was brought about by his own act, & the proper measure of damages was what it cost pltf. to complete the house substantially as it was originally intended & in a reasonable manner at the earliest moment he was allowed to proceed with the work, less any amount that would have been due & payable to deft. by pltf., had deft. completed the house to the roofing-in at the time agreed by the terms of his contract. Macedo v. Howe Freeholds Co., [1921] 2 K. B. 426; [1922] 1 A. C. 707; 125 L. T. 353.—CAN.

238. *Add. Annotation :*—**Mentd.** Vanderlip (Jones) v. S.S. Clarinda, 1922, 1 A. C. 457.

270. *Add. Annotation :*—**Mentd.** Abrahams v. Reach, 1922, 1 K. B. 177.

PART V.

(p. 373, l. —— *Ascertained by inspection of parties.*)—HANSON v. PARKS, [1925] 3 D. L. R. 1163.—**CAN.**

r l. —— ——.)—*Held:* to make the 20 per cent. retained by the owner valid security for completion of the ct in certifying 80 per to the proportion that the value of work done here to the cost of

. L. R. 419; 62 S. C. R. 634.—**CAN.**

h (p. 374) l. —— *Owner giving notes in default of cash—Notes discounted with bank & others paid.*)—SMITH v. MCCUTCHEON, [1922] 1 W. W. R. 306; 67 D. L. R. 564; 31 Man. L. R. 413.—**CAN.**

sb. *Under cost plus percentage agreement—Part of material supplied by owner—Right of contractor to percentage on cost of such material.*)—SMITH v. MCCUTCHEON, [1922] 1 W. W. R. 306; 67 D. L. R. 564; 31 Man. L. R. 413.—**CAN.**

PART VII.

r l. —— *Defect due to unsuitability of subject-matter of contract—Method of repair.*)—*Held:* the obligation of the

PART VIII SECT. 3, SUB-SECT. 1.

243) *Reduction of value of in-*

therefor—Penalty MCDONALD v. NORTH WEST [illegible] CO., [1924] 1 D. L. R. 967; 1 W. W. R. 793.—**CAN.**

Part IX.—Excuses for Non-Performance.

279. *Add. Annotations* :—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455. **Mentd.** Isaacs *v.* Mc Allum, [1924] 3 K. B. 377.

282. *Add. Annotations* :—*As to* (2) **Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526; Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455; Cantiere Navale Triestina *v.* Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298.

285a. —— —— **Brought about by contractor's own act.**]—MERTENS *v.* HOME FREEHOLDS Co., No. 230a, *ante*.

Part X.—Forfeiture.

293. *Add. Annotation* :—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

Part XI.—Materials.

312. *Add.* [illegible]*ion* :—*As to* (1) **Apld.** *Re* Blyth Shipbuilding & Dry Docks Co. Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

316. *Add. Annotation* :—**Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

318. *Add. Annotation* :—**Apld.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319. *Add. Annotation* :—**Distd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319a. [illegible]—A shipbuilding contract provided for payment of the price of the vessel by instalments, the first to be paid on the signing of the contract, the next when the keel was laid, & others at various stages in the progress of the ship's construction. She was to be constructed under the inspection of the purchasers' surveyor, to whose approval the quality of the material used & the workmanship were to be subject. Clause 6 provided that from & after payment by the purchasers to the builders of the first instalment on account of the price the vessel & all materials & things appropriated for her should thenceforth, subject to the lien of the builders for unpaid purchase-money including extras, become & remain the absolute property of the purchasers. After the first instalments of the purchase-money had been paid & the vessel had been partly constructed, a receiver was appointed in an action commenced by debenture-holders of the shipbuilding co. for enforcing their security:—*Held*: certain worked material lying in the yard ready to be incorporated into the hull of the vessel & approved by the purchasers' surveyor, had not been "appropriated for her" within the above clause so as to become the property of the purchasers.—*Re* BLYTH SHIPBUILDING & DRY DOCKS Co., FORSTER *v.* BLYTH SHIPBUILDING & DRY DOCKS Co., [1926] Ch. 494; 95 L. J. Ch. 350; 134 L. T. 613, C. A.

Part XII.—Assignment and Devolution of Rights and Liabilities.

341. *Add. Annotations* :—*As to* (1) **Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. (3) **Apld.** *Re* City Life Assce., [1926] Ch. 191. *As to* (4) **Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 339.

342. *Add. Annotation* :—**Refd.** Jones *v.* Steam Navigation Co., [1924] 2 K. B. 730.

PART XIII. SECT. 2, SUB-SECT. 2.

[illegible] LTD. *v.* SHEEHY (1922), 52 O. L. R. 237.—**CAN.**

1. [illegible]—Contractors:—to damages for breach of contract by sub-contractors by reason of materials not being delivered in time.—HOPE (HENRY) & SONS, LTD. *v.* SHEEHY (RICHARD) & SONS (1922), 52 O. L. R. 237.—**CAN.**

Part XV.—Arbitration Clauses.

387. *Add. Annotation :*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

388. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

388a. **Clause restricting time for opening reference —"Until after completion of works"—Meaning of.**]—The form of building contract issued by the Royal Institute of British Architects provides, by condition 31 in the schedule thereto, that should the building owner not pay the builder any sum certified by the architect within the time limited by the contract, the builder is to be at liberty to determine the contract & recover from the building owner payment for all work executed. Condition 32 provides that in case any difference shall arise between the building owner & the builder as to the construction of the contract or as to any matter arising thereunder, such difference is to be referred to arbn., but that "such reference . . . shall not be opened until after the completion of the works." During the progress of certain works which were being carried out under a [illegible] contract in the above form the [illegible] neglected to pay the builder [illegible] by the architect within the [illegible], & thereupon the builder [illegible] contract under condition 31. [illegible] commenced arbn. proceedings [illegible] works were still uncom- [illegible] arbitrator made an award in [illegible] money due to him under [illegible] *Held :* the words "until [illegible] tion of the works" in [illegible] not until after completion [illegible] the works contracted for. [illegible] until after completion of so much [illegible] as the builder was under [illegible] bound to perform; con- [illegible] was premature & the [illegible] jurisdiction to make the [illegible] events the validity of [illegible] ently doubtful to render [illegible] it summarily. SMITH [illegible] [1925] A. C. 619; 94 L. J. K. B. [illegible]

395. *Add. Annotation :*—**Mentd.** Hugi Mulji *v.* [illegible] (1926) A. C. 197.

Part XVI.—Architects and Engineers.

425. *Add. Annotation :*—**Folld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

434. *Add. Annotation :*—**Distd** Nixon *v.* Erith U.D.C., [1924] 1 K. B. 87.

436. *Add. Annotation :*—**Refd.** Nixon *v.* Erith U. D. C., [1924] 1 K. B. 819.

452a. **General Housing Memorandum No. 4.** [illegible] WANDSWORTH CORPN. (1924) [illegible], 88 J. P. Jo. 702.

458. *Add. Annotation* Apld. Higgins *v.* Northampton Corpn. [illegible] (1926), 90 J. P. 82.

PART XV. SECT. 1.

h l. [illegible] A contract for the construction of a covered way from the mainland to a lighthouse contained an arbn. clause, the first part of which referred all disputes, whenever arising, as to the contract & its execution to the employers' engineer, while the second part referred any dispute or claim arising after, or consequent on, the completion of the contract to another engineer. A dispute having arisen as to the rate payable for the removal of certain rock, the contractors refused to continue the work, & the employers took the work out of their hands. An action having been brought by the contractors for payment of sums alleged to be due under the contract & for damages :—*Held :* as the work was still in progress, the first part of the arbn. clause applied, it being immaterial that the work had been taken out of the hands of the pursuers, & action sisted to allow the arbn. to proceed.—CRAWFORD *v.* NORTHERN Lighthouses Comrs., [1923] S. C. (H. L.) 22.—**SCOT.**

PART XV. SECT. 4.

c l. [illegible].—A building contract contained a clause referring all disputes arising under the contract to the arbn. of the employers' engineer, who in fact superintended & directed the work :—*Held :* as the contractors had agreed to the appointment of the engineer as arbiter, they could not object to his acting upon the ground that he was an interested party with a [illegible] FORD *v.* NORTHERN [illegible] Comrs., [1925] S. C. (H. L.) 27.—**SCOT.**

PART XVI. SECT. 1

e i. [illegible] *Unqualified person*—*Held :* a person illegally employed could not thereby found a claim for admission to the Association of Professional Engineers as being a person "practising as a professional engineer" under Engineering Profession Act, Man. 1920 (c. 38), s. 7.—*Re* [illegible] ING PROFESSION ACT, *Re* Jones (1922) 3 W. W. R. 424; 70 D. L. R. 161.—**CAN.**

80. *Termination of appointment by verbal cancellation given to architect's assistant—Record of cancellation not to be architect.*]—*Held :* effective [illegible] LEY *v.* Cook, (1920), 2 W. W. [illegible] 52 D. L. R. 709.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 2.

k i. [illegible] *In giving decision*—Where the owner's engineer is made arbitrator, he must guard against being unduly influenced by his employers; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.—[illegible] REGINA (CITY), [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1.

di. [illegible]—Pltf.:—*Held* [illegible] for plans adopted & [illegible] was no express [illegible] ment. SINCLAIR *v.* [illegible] Board (B.C.), [illegible], **CAN.**

[illegible] *before registration*—[illegible] person employed [illegible] not registered, [illegible] is discontinued [illegible] entered, cannot [illegible]. BOWLEY *v.* [illegible] W. R. 331, 52 [illegible] CAN.

PART XVI. SECT. 3, SUB-SECT. 2.

k [illegible] *by employer* [illegible] *date.*] *Held :* [illegible], even though [illegible] was never [illegible] OF MONEY [illegible] 281. **CAN.**

PART XVI. SECT. 3, SUB-SECT. 4.

[illegible] 1911, an [illegible] for & superintending [illegible] building certificates [illegible] after $50,000 [illegible] returned a [illegible] on the certificates [illegible], amounting [illegible] on the full [illegible] would be) per [illegible] left, contained [illegible] & dispensed [illegible]:—*Held :* [illegible] his services [illegible], including [illegible] damages [illegible] the sum of [illegible] COOK *v.* HOY, (1921) 64 [illegible] 177, 32 D. L. R. 212.—**CAN.**

BUILDING SOCIETIES.

Part III.—Rules.

17. *Add. Annotation:*—**Apld.** *Re* Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration, [1921] 2 Ch. 318.

20. *Add. Annotation:*—**Consd.** *Re* Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration, [1921] 2 Ch. 318.

Part IV.—Officers.

36. *Add. Annotation:*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

37. *Add. Annotation:*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

41. *Add. Annotation:*—**Mentd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.

54. *Add. Annotation:*—**Mentd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.

Part VII.—Advances.

109. *Add. Annotation:*—**Mentd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 71.

110. *Add. Citation:*—*subsequent proceedings*, [1921] 2 Ch. 138, C. A.

110a. —— **Rights & benefits under—Whether transferable.**]—SUN BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, No. 230a, *post*.

111. *Add. Annotation:*—*Generally*, **Mentd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

112. *Add. Annotations:*—*As to* (1) **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438. *As to* (3) **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438. *As to* (4) **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

119. *Add. Citation:*—*subsequent proceedings*. [1921] 2 Ch. 438, C. A.

146. *Add. Annotation:*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 74.

184. *Add. Annotations:*—**Refd.** Sweet *v.* Macdiarmid (or Henderson) (1920), 7 Tax Cas. 640; Inland Revenue Comrs. *v.* Hay (1924), 8 Tax Cas. 636.

Part VIII.—Borrowing and Loans.

187a. **For purchase of mortgages—Whether purpose of society.**]—SUN BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, No. 230a, *post*.

190. *Add. Annotation:* **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.

198. *Add. Annotations:*—*As to* (2) **Refd.** Bowling *v.* Cox, [1926] A. C. 751. *Generally*, **Mentd.** Dominion Coal Co. *v.* Mackinonge S.S. Co., [1922] 2 K. B. 132; Boston Corpn. *v.* Fenwick (1923), 129 L. T. 706; Holt *v.* Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226.

202. *Add. Annotation:*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

204. *Add. Annotation:*—**Mentd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.

220. *Add. Annotations:*—**Refd.** Bowling *v.* Cox, [1926] A. C. 751. **Mentd.** Dominion Coal Co. *v.* Mackinonge S.S. Co., [1922] 2 K. B. 132; Boston Corpn. *v.* Fenwick (1923), 129 L. T. 706; Holt *v.* Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226.

223. *Add. Annotation:*—**Mentd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.

Part IX.—Investment or Other Application of Surplus Funds.

228. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

230. *Add. Citation : — subsequent proceedings*, [1921] 2 Ch. 438, C. A.

230a. —— —— **Insufficient surplus funds to carry out purchase.**]—Although a building society may transfer its mtges. either to an individual or to another building society, yet if it agrees to sell those securities to a purchaser & makes no stipulation as to what it is that the purchaser is to take under such agreement for sale, the only conclusion that can be drawn is that it agrees to transfer such benefits as it itself enjoys, & that it cannot do. Pltf. society was in liquidation, & in May, 1919, its liquidators entered into a contract with deft. society for the sale to deft. society of thirty-seven of the freehold & leasehold mtges. of pltf. society for £6,400. Deft. society having declined to complete, pltf. society issued a writ for specific performance. Subsequently the parties by agreement stated a special case for the opinion of the ct. as to, amongst other things, whether the contract was *ultra vires* deft. society, because it had not at the date of the contract surplus funds properly available for investment, & whether pltf. society could transfer the mtges. without the consent of the mtgors. Both these points were decided in favour of pltf. society :- *Held :* (1) although [illegible] might be *intra vires* in its inception [illegible] standing that deft. society had not [illegible] surplus funds to carry it out, [illegible] time when an order was made for [illegible] performance deft. society had not [illegible] surplus funds the effect of the order would be to require the society, which was not an investing society, to invest moneys which it had in its surplus funds in a security in which it had no power to invest them; (2) the further effect of the order, if made, would be to require deft. society to borrow money to pay for the mtges.; & as its borrowing power could not be resorted to except for borrowing for the purposes of the society, & as the purchase of the mtges. was not one of those purposes, the order would be an order requiring deft. society to do an *ultra vires* act, therefore no order for specific performance ought in the circumstance to be made; (3) having regard to the fact that the mtges. in question were building society mtges., pltf. society was not in a position to transfer to deft. society all the rights & benefits to which under them it was itself entitled; pltf. society was not ready & willing to perform its part of the contract, & consequently it could not enforce the contract. SEE BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, [1921] 2 Ch. 438; 91 L. J. Ch. 71; 125 L. T. 782; 37 T. L. R. 811; 65 Sol. Jo. 731, C. A.

Part X.—Disputes.

242. *Add. Citation :*—37 T. P. 468. | **277.** *Add. Citation :* 37 T. P. 468

Part XIII.—Dissolution.

307. *Add. Citation :—subsequent proceedings*, [1921] 2 Ch. 438, C. A.

370. *Add. Annotations :* As to (2) **Refd.** Bowling *v.* Cox, [1926] A. C. 751. *Generally*, **Mentd.** Dominion Coal Co. *v.* Mackinonge S.S. Co., [1922] 2 K. B. 422; Re Coal Corpn *v.* Fenwick [1923], 129 L. T. 503; Hill *v.* Markham, [1923], 1 K. B. 504; Cook *v.* San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1921], A. C. 226.

BURIAL AND CREMATION.

Part I.—Rights and Duties of Executors and Others as to Burial.

45. *Add. Annotation:* As to (2) **Refd.** Kent v. Atkinson, [1923] P. 142.

47. *Add. Annotation:* **Refd.** Barnett v. Cohen, [1921] 2 K. B. 461.

56a. **Verbal instructions by deceased for elaborate funeral.]**—*Re* READ, GALLOWAY v. HARRIS (1892), 36 Sol. Jo. 626.

Part III. Burial in Churches and Churchyards.

121. *Add. Annotation:* **Refd.** R. v. North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

Part VII.—Provision of Land for Burial Grounds.

201. *Add. Annotation:* *Generally*, **Refd.** R. v. North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

Part VIII.—Provision of Burial Grounds under Burial Acts.

204. *Add. Annotation:* **Consd.** Nicholl v. Llantwit Major Parish Council, [1924] 2 Ch. 214.

223. *Add. Annotation:* **Refd.** Rotunda Hospital, Dublin v. Coman (1920), 7 Tax. Cas. 517.

228a. **Power to acquire land by exchange.]**—NICHOLL v. LLANTWIT MAJOR PARISH COUNCIL, No. 291a, *post*.

Part X.—Position of Burial Grounds.

277. *Add. Annotation:* **Refd.** A.-G. v. Hodgson, [1922] 2 Ch. 429.

Part XI.—Closed and Disused Burial Grounds.

284. *Add. Annotation:* **Refd.** Swift v. Board of Trade, [1925] A. C. 520.

291. *Add. Annotation:* **Consd.** Nicholl v. Llantwit Major Parish Council, [1924] 2 Ch. 211.

291a. ——————.]—A parish council being the duly constituted burial authority for the parish took from pltf., in consideration of a covenant to redeem the tithe rentcharges charged on the land being conveyed & on adjoining land retained by pltf., a conveyance of land "to hold the same . . . according to the true

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PART VIII. SECT. 5.

280 i. *Extent of right—To pltf. "& his heirs & assigns".*]—Under Cemetery Act, R. S. A., 1922 (c. 166), the purchaser of a lot cannot get by a conveyance, even when expressed to be to his heirs & assigns, a title in fee simple without restriction or limitation. The title which he obtains may properly be described as an easement. —STRATHCONA CEMETERY CO. v. TAYLOR, [1924] 3 D. L. R. 625; 2 W. W. R. 970; 20 Alta. L. R. 459.—**CAN.**

280 ii. ——————*To whom right of burying passes.*]—The right of burying in the lot succeeds, speaking generally, to the next-of-kin of deceased.—STRATHCONA CEMETERY CO. v. TAYLOR, [1924] 3 D. L. R. 625; 2 W. W. R. 970; 20 Alta. L. R. 459.—**CAN.**

PART IX. SECT. 1.

281. *Prohibiting employment of hired labour to improve burial plots.*]—*Held:* reasonable & within the directors' powers.—STRATHCONA CEMETERY CO. v. TAYLOR, [1924] 3 D. L. R. 625; 2 W. W. R. 970; 20 Alta. L. R. 459.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 2.—A.

284 i. *Compulsory sale—Basis of compensation.*]—On expropriation of a cemetery, the trustees can only claim value as cemetery & cannot have the value of sand & gravel deposits beneath it, that not being part of the value to the owners.—R. v. MIDDLETON CHURCH TRUSTEES (1926), 56 D. L. R. 60.—**CAN.**

intent & meaning" of the Burial Acts. The land proved unfit & was never used for interments, & it was never fenced off or consecrated, nor did it adjoin any burial ground. The council agreed with pltff., with the approval of the parish meeting, to exchange the land for other land suitable for use as a burial ground:—*Held:* (1) the land first acquired by the council had never been "set apart for the purposes of interment" & was not therefore a "disused burial ground," so as to be subject to the restriction imposed by 1884 Act, s. 3; (2) the council had power to effect the exchange by virtue of the powers to sell land not required for interments & to buy land for the purposes of interment conferred respectively by 1852 Act, ss. 28 & 26, as extended by 1853 Act, s. 7.—NICHOLL *v.* LLANTWIT MAJOR PARISH COUNCIL, [1924] 2 Ch. 214; 93 L. J. Ch. 602; 131 L. T. 634; 68 Sol. Jo. 718.

292. *Add. Annotation:*—**Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214.

300. *Add. Annotation:*—**Mentd.** Hurley *v.* Stepney B. C. (1923), 67 Sol. Jo. 767.

300a. Urinal.]—A borough council petitioned for a faculty to authorise the conversion of a consecrated churchyard, which had been wholly closed for interments by Order in Council into an open space, & the laying out & maintenance of it as such. Authority was sought for laying out & maintaining part of [illegible] yard as a playground for children [illegible] ection upon it of urinals & a small [illegible] *Held:* (1) the proposed urinals [illegible] ings" within 1884 Act, s. 2, & [illegible] Act, 1887 (c. 32), s. 4, & the [illegible] urisdiction to authorise their [illegible] the proposed toolshed was [illegible] the laying out & maintaining [illegible] yard as an open space, & was [illegible] ing" within the above Acts; [illegible] ved justified the authorisation [illegible] converted churchyard, but [illegible], such as cricket & football, [illegible] tennis courts & the erection [illegible] structures should be prohibited. Faculty decreed, but not to issue until the council had made bye-laws embodying the above prohibitions & prescribing the hours during which the churchyard should be open to the public, so as to prevent any nuisance to the occupants of adjoining houses. A fund carried a copy thereof into the diocesan registry for approval by the chancellor. HAMPSTEAD Borough Council *v.* Monkhouse, [1926] P. 87.

300b. Toolshed. HAMPSTEAD Borough Council *v.* Monkhouse, No. 300a, *ante*.

315. *Add. Annotation: Generally.* **Refd.** Hampstead Borough Council *v.* Monkhouse, [1926] P. 87.

323a. Playground for children. Tennis courts & swings. HAMPSTEAD Borough Council *v.* Monkhouse, No. 300a, *ante*.

Part XVI.—Registration of Burials.

375. *Add. Annotations:*—*As to* (1) **Consd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879. *As to* (2) **Consd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879. **Refd.** Brooklands Bank *v.* R., [1925] 1 K. B. 52. *As to* (3). **Refd.** Marshal Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343.

Part XIX.—Taxation and Rating of Burial Grounds and Burial Fees.

388. *Add. Annotation:*—**Mentd.** Durham County Council *v.* Tanfield Overseers, [1923] 2 K. B. 333.

389. *Add. Annotations:* **Refd.** Poplar Assmt. Com. *v.* Roberts, [1922] 2 A. C. 93; Harper *v.* Hedges, [1923] 2 K. B. 311.

CARRIERS.

Part I.—Who is a Common Carrier.

4a. —— ——.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s furniture from L. to H., the contract being subject to a condition that the contractors would not be responsible for loss or damage caused by fire. Part of the furniture, which was loaded on a motor lorry, was destroyed by fire, occasioned by the negligence of defts.' servants, the remaining portion being damaged by the fire. Pltf. sued defts. for the value of the goods damaged & destroyed:—*Held:* defts. were not liable, inasmuch as the condition that they would not be responsible for fire protected them from liability, since the clause would be of no effect unless it referred to fire caused by the negligence of defts., as, not being common carriers, they would not in any event be liable for loss caused by accidental fire.—TURNER *v.* CIVIL SERVICE SUPPLY ASSOCN., LTD., [1926] 1 K. B. 50; 95 L. J. K. B. 111; 134 L. T. 189.

Annotation:—**Foll'd.** Fagan v. Green & Edwards (1925), 70 Sol. Jo. 185.

4b. —— ——.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s goods from L. to O., the contract being subject to a condition that defts. would not be responsible for fire. The goods, which were loaded on a motor van, were destroyed while in transit by fire, which was occasioned by the negligence of defts.' servants. Pltf. sued defts. for the value of the goods:—*Held:* as defts. were bailees only & not common carriers, &, therefore, not liable for an accidental fire, the condition must be construed as exempting them from liability for fire arising from their own negligence, as otherwise the condition would be of no effect.—FAGAN *v.* GREEN & EDWARDS, LTD., [1926] 1 K. B. 102; 95 L. J. K. B. 363; 134 L. T. 191; 70 Sol. Jo. 185.

5a. —— **Upon terms limiting liability.**]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *post.*

6. *Add. Annotation:*—*As to* (3) **Reid.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

12a. —— —— ——.]—TURNER *v.* CIVIL SERVICE SUPPLY ASSOCN., LTD., No. 4a, *ante.*

12b. —— —— ——.]—FAGAN *v.* GREEN & EDWARDS, LTD., No. 4b, *ante.*

14a. —— **Of goods accompanied by passenger.**]—By London County Council (Tramways & Improvements) Act, 1911, s. 42: "Every passenger travelling upon any of the council's tramways may take with him his personal luggage, not exceeding 28 lbs. in weight, without any charge . . . all such luggage to be carried by hand" under certain conditions. In respect to luggage which did not fulfil these conditions the council were entitled to make such charge as they thought fit. Pltf., wishing to send a parcel of goods weighing some 50 lbs. to a customer, instructed his servant to convey it by one of defts.' tramcars. The servant did so, & in addition to paying his own fare paid 2*d.* for the parcel. When he arrived at his destination the servant claimed his parcel, but found that it had been lost. In an action brought by pltf. claiming damages:—*Held:* the provisions of sect. 42 of the private Act being inconsistent with one of the peculiar features of a common carrier, who was bound to carry all goods of the class which he proposed to carry, for all & sundry & irrespective of the fact that the goods were accompanied by a passenger, the London County Council were not common carriers of goods so as to be entitled to the benefit of Carriers Act, 1830 (c. 68).—ROSENTHAL *v.* LONDON COUNTY COUNCIL (1924), 131 L. T. 563; 88 J. P. 157; 22 L. G. R. 527.

16. *Add. Annotation:*—**Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

17. *Add. Annotation:*—**Reid.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

18. *Add. Annotation:*—**Reid.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

31. *Add. Annotations:*—**Reid.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50.

Part II.—Private Carriers and Forwarding Agents.

43. *Add. Annotation:*—*As to* (1) **Reid.** Phillips *v.* Britannia Hygenic Laundry Co., [1923] 1 K. B. 539.

44. *Add. Annotation:*—*Generally*, **Reid.** Pratt *v.* Patrick, [1924] 1 K. B. 455.

45. *Add. Annotation:*—**Reid.** Troy *v.* Eastern Co. of Warehouses Insce. & Transport of Goods, etc. (Petrograd) (1921), 91 L. J. K. B. 632.

46. *Add. Citation:*—15 Asp. M. L. C. 208.

47. *Add. Citations:*—91 L. J. K. B. 632; 15 Asp. M. L. C. 387.

PART I. SECT. 1.

4 b. *Carrying on business as carrier—Furniture remover.*]—Defts., a carrier & forwarding agent, tendered for the removal of pltf.'s furniture in the following terms: "We beg to quote £190. This price includes all transit charges, including delivery to house & unpacking, also risk of breakage, the value of any one package not to exceed £10." This tender was accepted:—*Held:* defts. was not in this transaction a common carrier, & Mercantile Law Act, 1856, s. 16, did not apply.—WILSON *v.* NEW ZEALAND EXPRESS CO., LTD., [1922] N. Z. L. R. 961.—H.R.

5 b. *Carrier of goods—Of all persons—For hire.*]—HEATHERTON *v.* MITCHELL. POOLEY *v.* MITCHELL, [1915] 4 D. L. R. 334—Orig.

Part III.—The Contract at Common Law.

51. *Add. Annotation* :—**Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

56. *Add. Annotation* :—*As to* (2) **Reld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

61. *Add. Annotation* :—**Mentd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

66. *Add. Annotations* :—*As to* (1) **Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742 *As to* (2) **Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

82. *Add. Annotation* :—**Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

85. *Add. Annotations* :—**Mentd.** The Empress (1923), 92 L. J. P. 42 ; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451 ; Pratt *v.* Patrick, [1924] 1 K. B. 488.

90a. —— ——.]—Great Northern Ry. Co. *v.* L. E. P. Transport & Depository, Ltd., No. 234a, *post*.

92a. —— ——.]—Chests of tea of resps. were delivered to a railway co. for conveyance from A. to C. The railway broke down, & by an arrangement between the railway co. & applts., who were common carriers by water, applts. agreed to convey the tea by a special flotilla by river to a point at which it could be put on the railway again :—*Held* : in so doing, applts. had not so far departed from their usual course of business as to take these journeys out of their usual business as carriers, & they were liable for the loss of the tea which was destroyed by fire while on board one of their boats.—India General Navigation & Ry. Co. *v.* Dekhari Tea Co. (1923), 93 L. J. P. C. 108 ; 130 L. T. 554 ; 16 Asp. M. L. C. 285, P. C.

96. *Add. Annotations* :—**Reld.** Pratt *v.* Patrick, [1924] 1 K. B. 488. **Mentd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

97. *Add. Annotation* :—**Mentd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

98. *Add. Annotation* :—**Mentd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

114. *Add. Annotations* :—*As to* (1) **Reld.** United States Shipping Board *v.* Bunge & Born (1924), 41 T. L. R. 73. *As to* (2) **Reld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

149. *Annotations* :—After "*As to* (2)" add "**Reld.**"

151. *Add. Annotation* :—**Reld.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

PART III. SECT. 3, SUB-SECT. 1.—A.

t i. —— ——.]—The *onus* is on the carrier to prove that the loss is not due wholly or in part to his negligence, & that he took all known means a reasonably prudent carrier should take to preserve goods from damage.—Canadian Northern Quebec Ry. Co. *v.* Pleet, [1923] 4 D. L. R. 1112 ; 26 Can. Ry. Cas. 238.—CAN.

t ii. —— ——.]—In accordance with a rule of the Canadian freight classification approved by Railway Board, goods were loaded by the owners, pltfs., & under the standard bill of lading, carriers are not liable for any loss or damage caused by the act or default of the shipper or owner. An accident happened through the flooring of a car giving way on account of the weight placed on it by pltfs. The defective flooring was known to both parties, but pltfs. alone knew the use the cars were to be put to :—*Held* : the accident should be attributed to pltfs.' method of loading rather than to any breach of duty on part of defts.—Canadian Westinghouse Co., Ltd. *v.* Canadian Pacific Ry. Co. (1923), 54 O. L. R. 238.—CAN.

77 ii a. ——————.]—Northern Grain Co. *v.* Canadian National Rys. & Grand Trunk Pacific Ry., [1922] 3 W. W. R. 733 ; 70 D. L. R. 281.—CAN.

77 v. —— —— *Through sub-contractor's negligence.*]—When a carrier undertakes for reward to carry goods & entrusts the carriage of them to a sub-contractor, & the goods are subsequently lost through the sub-contractor's negligence or that of his servants, the carrier is liable, because there has been a breach of his undertaking that ordinary care will be exercised in the carriage of the goods.—Wilson *v.* New Zealand Express Co., Ltd. (No. 2), [1924] N. Z. L. R. 481.—N.Z.

77 vi. S. P. Wilson *v.* New Zealand Express Co., Ltd. (No. 3), [1924] N. Z. L. R. 896.—N.Z.

86 iii. ——————.]—Goods were damaged :—*Held* : defts. were not exempt from liability by any special contract in the bills of lading issued after delivery taken of the goods, &, having failed to show that the damage was not caused by their fault or neglect, they were liable.—Eggett, Ltd. *v.* Pacific Great Eastern Ry. Co., [1923] 1 W. W. R. 884 ; 32 B. C. R. 37.—CAN.

91 i. —— *Goods destroyed—No written contract limiting liability.*]—*Held* : applts. were common carriers & were liable to owners for goods destroyed by fire without proof of negligence.—India General Navigation & Ry. Co. *v.* Dekhari Tea Co., Ltd. (1923), L. R. 51 Ind. App. 29.—IND.

PART III. SECT. 3, SUB-SECT. 1.—B.

100 i. —— *Goods stolen from carrier's warehouse at destination—Carrier making no warehouse charge.*]—*Held* : holding the goods at owner's risk, defts. could not be found liable for the loss unless they were guilty of wilful neglect or misconduct.—Brown *v.* Dominion Express Co. (1921), 67 D. L. R. 325 ; 61 O. L. R. 359.—CAN.

100 ii. —— —— *Consignee with notice of arrival—Bonded goods—Carrier liable.*]—George *v.* Canadian Northern Ry. Co., (1922) 53 O. L. R. 94.—CAN.

100 iii. —— —— —— *Carrier not liable—Failure of consignee to remove goods within reasonable time.*]—Dyament & Pradkawolsky *v.* Canadian Express Co., [1923] 3 D. L. R. 1172 ; 52 O. L. R. 114.—CAN.

PART III. SECT. 3, SUB-SECT. 1.—D.

105 i. *Illegality as defence.*]—Pltf. shipped by deft. co. intoxicating liquor, intending to have it sold in Ontario in violation of provincial statute & of Dominion legislation. Pltf. in the shipping bill declared "that this shipment is of a class & shipped under conditions permitted by law." Part of the goods were stolen from defts.' car at destination :—*Held* : pltf. could not recover, as the cause of action was founded upon an illegal contract.—Major *v.* Canadian Pacific Ry. Co., [1922] 3 W. W. R. 512.—CAN.

PART III. SECT. 3, SUB-SECT. 2.—B.

af. Who are.]—While there was in Ireland an internal rebellion, with an army employed to support it, armed raiders took goods from a ry. co. who were common carriers :—*Held* : the raiders were "King's Enemies," & the co. was not bound to reimburse the owner.—Secretary of State for War *v.* Midland Great Western Ry. Co. of Ireland, [1923] 2 I. R. 103.—IR.

PART III. SECT. 4.

155 i. *Effect of delay—Consignee may refuse goods—Measure of damages.*]—Lecleric *v.* R. (1920), 62 D. L. R. 824 ; 20 Exch. C. R. 236.—CAN.

PART III. SECT. 5.

159 ix. —— —— —— ——.]—Portage Milling & Transfer Co. *v.* Grand Trunk Pacific Ry. Co., [1923] 3 D. L. R. 34 ; 33 Man. L. R. 91 ; [1923] 2 W. W. R. 85.—CAN.

159 x. —— —— —— *Delay in delivery.*]—Hatfield & Scott, Ltd. *v.* Canadian Pacific Ry. Co. (1921), 57 D. L. R. 453.—CAN.

165 ii. —— —— —— *Goods damaged.*]—Where goods are damaged in transit & have been in the hands of a number of carriers, the vendor must prove the damage took place while in the custody of the carrier he is suing.—Hogg & Laflamme, Ltd. *v.* Campbell, Wilson & Strathdee, Ltd. & Grand Trunk Pacific Ry. Co., [1923] 1 D. L. R. 897.—CAN.

ag. What consignee must prove—That goods in good condition when shipped—That goods actually passed over lines of defendants.]—Nova Scalia Co. & Canadian Pacific Ry., [1925] 2 D. L. R. 919.—CAN.

PART III. SECT. 7, SUB-SECT. 1.

d i. ——.]—Goods carried by defts. for pltf. :—*Held* : at owner's risk while in defts.' warehouse at point of destination.—Brown *v.* Dominion

201. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel' Stamp & Heacock, [1924] 1 K. B. 566.

208. *Add. Annotations :*—**Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

Part IV.—Modifications of the Common Law Contract.

232. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

234a. ——.]—A carrier who regularly receives goods for carriage upon terms limiting his liability may be under the obligations & subject to the liabilities of a common carrier in so far as the limitation of liability does not extend. He does not by limiting his liability assume for all purposes the position of a bailee for reward who is liable only for negligence of himself or his servants, unless the limitation of liability is so extensive as to be inconsistent with the profession or contract of a common carrier.

A consignor who tenders to carriers for carriage goods apparently harmless but in fact dangerous, whether the carriers are common carriers bound by the custom of the realm to carry goods provided they are safe & fit for carriage or whether they are a railway co. bound by statute to afford reasonable facilities for the receiving, forwarding & delivering of goods, must give warning of the danger; otherwise he impliedly warrants that the goods are safe & fit for carriage.

Forwarding agents delivered to a railway co. for carriage certain carboys containing a corrosive fluid & also certain bales of felt goods on the terms of consignment notes exempting the co. from liability in certain events & stating that they did not undertake to carry dangerous goods except on special conditions. The carboys were insufficient to contain the fluid, which escaped & injured the felt goods. The co. professed to carry the felt goods as common carriers. The owner of the felt goods claimed damages against the co., & the co. paid £437 in settlement of the claim. In an action by the co. against the forwarding agents to recover this sum as damages for breach of warranty :—*Held :* (1) the terms of the consignment notes did not prevent the co. from being, as they professed to be, common carriers of the felt goods; (2) the co. were therefore liable as insurers, & without proof of negligence, to the owner of the felt goods; (3) they were entitled to recover from the forwarding agents, as upon an implied warranty that the carboys were fit to be carried, the amount they had paid to the owner of the felt goods for the damage done to his goods.—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., [1922] 2 K. B. 742; 91 L. J. K. B. 807; 127 L. T. 664; 38 T. L. R. 711, C. A.

262. *Add. Annotations :*—**Refd.** The Christel Vinnen, [1924] P. 61; Elder, Dempster *v* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

265. *Add. Annotations :*—**Consd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50. **Refd.** Fagan *v.* Green & Edwards, [1926] 1 K. B. 102.

266. *Add. Annotations :—As to* (1) **Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662. *As to* (2) **Refd.** Rutter *v.* Palmer, [1922] 2 K. B. 87; Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185. *Generally*, **Mentd.** Wasserman *v.* Blackburn (1926), 43 T. L. R. 95.

267. *Add. Annotations :*—**Refd.** Ambatielos *v.* Anton Jurgens Margarine Works, [1922] 2 K. B. 185; Rutter *v.* Palmer, [1922] 2 K. B. 87.

271. *Add. Annotations :—As to* (1) **Apprvd. & Apld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. *As to* (2) **Apprvd. & Apld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 203. **Consd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

EXPRESS Co. (1921), 67 D. L. R. 325; 51 O. L. R. 339.—CAN.

d ii. ——.]—When goods entrusted to a shipowner, trading as a common carrier, have reached their destination & been stored pending removal by the consignee, the carrier ceases to be liable as an insurer.—OAKLEY *v.* WHITEHOUSE & Co. (1921), 17 Tas. L. R. 125.—AUS.

PART III. SECT. 7, SUB-SECT. 2.

122 ii. —— ——.]—PREMIER LUMBER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649; [1923] S. C. R. 84; 1 W. W. R. 473.—CAN.

122 iii. —— ——.]—NORTHERN ELECTRIC CO., LTD. *v.* CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781; 3 W. W. R. 278.—CAN.

PART III. SECT. 7, SUB-SECT. 5.

g i. ——.]—*Held :* a consignee by delay in accepting delivery cannot extend the period of the contractor's liability as such.—PORTAGE MILLING & TRANSFER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 2 W. W. R. 88.—CAN.

sk. *Rights of carrier — To sell — Must be exercised with reasonable diligence.*]—DAVIS *v.* ELLIOT (1924), 55 O. L. R. 583.—CAN.

PART III. SECT. 7, SUB-SECT. 6.

129 i. *When justified—Refusal of consignee to pay charges.*]—PATEL *v.* KEELER & Co., [1923] App. D. 506.—S. AF.

PART III. SECT. 8.

e. Add "revsd. (1921), 64 D. L. R. 316; 50 O. L. R. 223."

e i. —— ——.]—NAKKARENO *v.* ALGOMA EASTERN RY. CO. (1922), 70 D. L. R. 268.—CAN.

PART IV. SECT. 1, SUB-SECT. 2.

ai. *Condition requiring notice of loss—Absence of notice bar to right of action.*]—PREMIER LUMBER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649; [1923] S. C. R. 84; 1 W. W. R. 473.—CAN.

am. *S. P.* NORTHERN ELECTRIC CO., LTD. *v.* CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781; 3 W. W. R. 278.—CAN.

an. *United States freight classification.*]—A contract of carriage of goods from the United States to Canada made according to a freight classification in use in the United States, whereby the carrier's liability was limited to a certain amount :—*Held :* to be authorised by Railway Act, 1919 (c. 68), s. 322 (4), & such classification & limitation were binding on the shipper.—STORIE *v.* GREAT NORTHERN RY. CO., [1923] 3 D. L. R. 302; [1923] 1 W. W. R. 835; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—CAN.

PART IV. SECT. 1, SUB-SECT. 4.—A.

e i. —— *Goods lost—No proof of misconduct of carrier's servants—Carrier not liable.*]—SOUTH AFRICAN RYS. *v.* CONRADIE, [1922] App. D. 137.—S. AF.

300. *Add. Annotation :*—*As to* (2) **Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 673.

302. *Add. Annotation :*—**Refd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563.

342. *Add. Annotations :*—*As to* (1) **Refd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563. *As to* (2) **Consd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563.

347. *Add. Annotations :*—*As to* (2) **Apld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (3) **Apld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

351. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

376. *Add. Annotation :*—*As to* (4) **Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

381. *Add. Annotation :*—*As to* (1) **Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

403. *Add. Annotation :*—*As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

411. *Add. Annotation :*—*As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

416. *Add. Annotation :*—*Generally*, **Mentd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

426. *Add. Annotations :*—*As to* (2) **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407. **Refd.** Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

436. *Add. Annotation :*—*As to* (1) **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

442. *Add. Annotations :*—*As to* (2) **Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

452. *Add. Annotations :*—**Overd.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. **Consd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

453. *Add. Annotation :*—**Consd.** Neilson *v.* L. & N. W. Ry., [1922] 1 K. B. 192.

454. *Add. Citations :*—[1922] 1 K. B. 192; *affd. sub nom.* LONDON & NORTH WESTERN RY. CO. *v.* NEILSON, [1922] 2 A. C. 263; 91 L. J. K. B. 680; 38 T. L. R. 653; 66 Sol. Jo. 502, H. L.

Add. Annotations :—**Apld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646. **Refd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50.

460. *Add. Citations :*—*affd.*, [1922] 1 A. C. 178; 91 L. J. K. B. 423; 127 L. T. 1; 38 T. L. R. 359; 27 Com. Cas. 247, H. L.

480. *Add. Annotation :*—**Refd.** Phillips *v.* Britannia Hygenic Laundry Co., [1923] 1 K. B. 539.

516. *Add. Annotations :*—**Consd.** Brandon *v.* Osborne Garrett, [1924] 1 K. B. 548; The Paludina, [1925] P. 40. **Refd.** Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

536. *Add. Annotation :*—**Refd.** Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

560. *Add. Annotation :*—*As to* (2) **Refd.** Sharpe *v.* Southern Ry. (1925), 133 L. T. 693.

560a. —— **Warning not heard by passenger—Passenger asleep.**]—Pltf. was a passenger on defts.' railway to G. by a train which arrived at that station while it was still daylight. Owing to the train being too long for the platform at G., upon its arrival there the hindmost carriage, in which pltf. was, stopped short of the platform. A porter shouted to

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PART IV. SECT. 1, SUB-SECT. 7.

s l. —— "*Value at place & time of shipment.*"]—*Held :* the value must not be calculated at the cost price to the owner at the place where he bought the goods, but at the market value of the goods at the place & time of shipment.—THOMPSON *v.* CANADIAN PACIFIC RY. CO. (1922), 52 O. L. R. 306.—CAN.

ss. *Goods exceeding declared value—Shipper bound by declared value.*]—SPORLE *v.* GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302; [1926] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—CAN.

PART IV. SECT. 2, SUB-SECT. 4.—B.

s (p. 69) l. —— *Must be approved by Railway Commissioners Board—Onus of proof of approval on carrier.*]—SPORLE *v.* GREAT NORTHERN RY. CO., [1924] 4 D. L. R. 184; 3 W. W. R. 136; 34 B. C. R. 140.—CAN.

PART V. SECT. 2, SUB-SECT. 1.

498 l. *Not liable for mere accident—Caused by act of stranger.*]—If an accident is due to the train leaving the metals, *prima facie* the railway co. is guilty of negligence. If an accident is caused to a train by evilly-disposed persons over whom the railway co. had no control or any reason to anticipate that they intended to carry out their design in the sector in which the accident occurred, the railway co. will not be liable for negligence or for damages.—JEWAN RAM KHETTRY *v.* EAST INDIAN RY. CO. (1924), I. L. R. 51 Calc. 861.—IND.

512 l. —— *Act done in course of employment.*]—Pltf., a passenger upon a south-bound car of an electric street ry. co., got off at a stopping place, & crossing behind the car, attempted to pass over the rails used by the north-bound cars, & was struck by a car & injured. She had followed the directions given her by the conductor of the south-bound car:—*Held :* pltf. was entitled to recover. The way pltf. was directed to take was dangerous & this was known to the conductor.—FORSTER *v.* TORONTO RY. CO. (1921), 67 D. L. R. 441; 51 O. L. R. 136.—CAN.

PART V. SECT. 2, SUB-SECT. 2.

k l. —— —— *Bye-law prohibiting passengers from riding on car platforms.*]—Where it was proved that pltf. could not, by exercise of reasonable care, have avoided the accident, that there was standing room inside the car, but standing passengers prevented him from going in:—*Held* pltf. was entitled to recover.—KIRK *v.* HAMILTON RADIAL ELECTRIC RY. CO. (1921), 50 O. L. R. 113; 64 D. L. R. 191.—CAN.

PART V. SECT. 2, SUB-SECT. 5.

557 vii. —— *Failure to take precautions to prevent passengers from alighting.*]—MURPHY *v.* GRAND TRUNK RY. CO. (1922), 52 O. L. R. 642.—CAN.

p. Add "*rend.* (1920), 46 O. L. R. 386; 19 O. W. N. 321."

q l. —— —— —— ——.]—As long as the entrance doors of a street car are open while the car is standing at a passenger landing place there is an implied invitation extended to intending passenger to enter the car, & it is the duty of the conductor in charge of the car to afford them a reasonable opportunity to do so in safety. He is therefore negligent in giving the signal to start the car before the entrance doors are closed & all persons attempting to board the car are safely on.—WILSON *v.* WINNIPEG ELECTRIC RY. CO., [1923] 2 W. W. R. 810; 68 D. L. R. 617.—CAN.

Part V.—Carriage of Persons.

the passengers to keep their seats, but pltf., who was asleep, did not hear him. On waking pltf. realised that he was at G. station, & fearing that he might be carried on, got out in a hurry without looking to see what he was stepping on. There being a drop of five feet from the carriage floor to the ground, he fell & was injured:—*Held:* even if in the circumstances defts. were negligent, of which the ct. thought there was no evidence, pltf.'s act in getting out without looking where he was going was contributory negligence, & defts. were not responsible.—SHARPE *v.* SOUTHERN RY. CO., [1925] 2 K. B. 311; 94 L. J. K. B. 913; 133 L. T. 693; 69 Sol. Jo. 775, C. A.

571. *Add. Annotation:*—**Distd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

572. *Add. Annotation:*—**Refd.** Sharpe *v.* Southern Ry. (1925), 133 L. T. 693.

573. *Add. Annotation:*—*As to* (1) **Consd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

597. *Add. Annotation:*—**Apprvd. & Apld.** Letang *v.* Ottawa Electric Ry., [1926] A. C. 725.

598a. —— —— ——.]—Applt. met with an accident on resps.' property by using some slippery steps giving convenient access to their tramline. She sued resps. for damages. Resps. contended that applt. had been guilty of contributory negligence, & that the maxim "*Volenti non fit injuria*" applied to prevent her from receiving compensation:—*Held:* unless resps., who had invited applt. to use the access & were bound to keep it reasonably safe, established that she understood the extent of the danger which she was incurring & that she resolved to undertake the risk, the defence of "*Volenti non fit injuria*" failed.—LETANG *v.* OTTAWA ELECTRIC RY. CO., [1926] A. C. 725; 95 L. J. P. C. 153; 135 L. T. 421; 42 T. L. R. 506, P. C.

603. *Add. Annotation:*—*As to* (3) **Refd.** Montreal City *v.* Watt & Scott (1922), 128 L. T. 147.

605. *Add. Annotation:*—**Refd.** Nunan *v.* Southern Ry., [1923] 2 K. B. 703.

609. *Add. Annotation:*—*As to* (2) **Consd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

620. *Add. Annotation:*—*As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

629. *Add. Annotation:*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

638. *Add. Annotation:*—**Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

645. *Add. Annotation:*—**Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253.

652. *Add. Annotation:*—**Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

683a. —— **Necessity for submission to Rates Tribunal of schedule for standard season tickets.**]—*Re* STANDARD CHARGES SCHEDULES, No. 1323a, *post.*

684. *Add. Annotations:*—**Consd.** Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185. **Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

685a. —— **Railway company—Whether applicable—Action under Fatal Accidents Act, 1846 (c. 93).**]—Where a passenger by railway, who has agreed with the railway co. that their liability for personal injury shall not exceed a certain sum, is killed by the negligence of the co.'s servants, the damages recoverable by his dependants in an action under the above Act are not limited to such agreed sum.—NUNAN *v.* SOUTHERN RY. CO., [1924] 1 K. B. 223; 93 L. J. K. B. 140; 130 L. T. 131; 40 T. L. R. 21; 68 Sol. Jo. 139, C. A.

Annotation—**Mentd.** Venn *v.* Tedesco, [1926] 2 K. B. 227.

685b. —— —— —— **Injury on journey by special train.**]—Pltf. was engaged as a workman by contractors to the Ministry of Health for the construction of a road near H., & the Ministry made with deft. railway co. arrangements for a special train to take pltf. & other men from C. to H., a distance of twenty-six miles. Pltf. received from his employers a voucher which was addressed to the booking clerk & which contained these words: "On surrender of this voucher please supply the bearer with a return workman's ticket to H. by any ordinary workman's train without payment. This voucher is only available by workman's train." The voucher, on presentation at the booking office, was exchanged for a ticket. One side of the ticket had on it (*inter alia*) the words: "See back. Workmen. By special cheap train for the 'working classes.'" On the other side were (*inter alia*) the words: "This ticket is issued subject to the bye-laws, rules & regulations of the Managing Committee," & "This ticket is issued subject to the conditions mentioned in the Managing Committee's Act (62 & 63 Vict. c. clxviii), & its use by the holder is to be taken as evidence of a special contract upon those conditions. The liability of the co. is limited to a sum not exceeding £100." The above-mentioned Act contained provisions as to the running of workmen's trains on the particular railway within twenty miles of London, & limited the co.'s liability to £100, subject to certain conditions. Pltf. was injured by a collision between his train & another train. In an action for damages defts. admitted negligence, but contended

564 v. —— *Passenger thrown down.*]—*Held:* there was negligence on the part of defts.' servants, & deft. liable in damages.—GITLEAY *v.* WINNIPEG ELECTRIC RY. CO., [1922] 3 W. W. R. 498; 70 D. L. R. 517.—**CAN.**

11. *Passenger stepping from moving car—Accident avoidable by exercise of reasonable care by carrier.*]—GRIFFIN *v.* CAPE BRETON ELECTRIC CO. (1921), 63 D. L. R. 251; 55 N. S. R. 19.—**CAN.**

11. —— *In contravention of bye-law.*]—*Held:* a contravention of an absolute statutory provision precluded a claim for damages.—HILL *v.* GRAND TRUNK RY. CO. (1923), 53 O. L. R. 503.—**CAN.**

PART V. SECT. 2, SUB-SECT. 11.

p 1. —— —— ——.]—The form of contract or shipping order used by a ry. co. in connection with the transportation of live stock provided that an attendant should accompany the shipment, but should not have the right to travel free or at a rate less than the ordinary fare, unless he had signed the special form of contract printed on the back of the shipping bill, which contained limitations as to claims for personal injuries sustained while travelling. In an action to recover damages for injuries during transportation, due to the negligence of the ry. co.'s servants:—*Held:* the fact that the attendant had not paid any fare was due to the fact that the ry. co.'s agent made no attempt to collect the fare, & the ry. co. was responsible for the omission; the attendant was a full-fare passenger & not a trespasser & was entitled to recover damages.—STEWART *v.* GRAND TRUNK PACIFIC RY. CO., [1924] 1 D. L. R. 851; 1 W. W. R. 473.—**CAN.**

PART V. SECT. 2, SUB-SECT. 12.

sp. *Passenger standing on platform of moving car.*]—A passenger who leaves his seat in a tramway car & goes on to the platform, while the car is in motion, is not necessarily guilty of contributory negligence should he meet with an accident while on the platform, the question depending in each case upon the particular circumstances.—BUCHANAN *v.* GLASGOW CORPN., [1921] S. C. 668.—**SCOT.**

that the issue of the ticket created a special contract between themselves & pltf. whereby their liability was limited to £100. The ct. found that pltf. must be taken to have been aware of the conditions indorsed on the back of the ticket. On the further question whether the terms of the contract applied to the particular journey :- *Held:* although the ticket & the conditions on it had been drafted as applicable to a journey by a train coming under the co.'s private Act, & contained no reference to such a journey as pltf.'s by a special train to a destination beyond twenty miles from London, yet, in the case of a passenger in the position of pltf., the conditions were a plain intimation that one condition on which the contract was made was that the co.'s liability should be limited to £100, & pltf. could recover no more than that amount.--HEARN v. SOUTHERN RY. CO. (1925), 41 T. L. R. 305, C. A.

685c. Time limit for making claim.]—Pltf. was received by defts. under a contract to be carried in one of their steamships. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract :— *Held:* (1) the clause relieving defts. from liability for the negligence of their servants was valid & enforceable, but applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury ; (2) as pltf. had failed to give any written notice of his claim within the time prescribed by the contract, he was not entitled to recover.—JONES v. OCEANIC STEAM NAVIGATION CO., [1924] 2 K. B. 730 ; 93 L. J. K. B. 1053 ; 132 L. T. 207 ; 40 T. L. R. 847 ; 69 Sol. Jo. 106 ; 16 Asp. M. L. C. 432.

689. *Add. Annotations :* **Refd.** Numan v. Southern Ry. (1923), 130 L. T. 131 ; Hearn v. Southern Ry. (1925), 41 T. L. R. ;

695. *Add. Annotations :* **Refd.** Numan v. Southern Ry. (1923), 130 L. T. 131. **Mentd.** Anchor Line (Henderson) v. Dundee Harbour Trustees, Ellerman Lines v. Dundee Harbour Trustees, Thomson, Shephard v. Dundee Harbour Trustees (1922), 38 T. L. R. 290.

696. *Add. Annotation :* **Refd.** Walpole v. Canadian Northern Ry., [1923] A. C. 113.

704. *Add. Annotations :* **Refd.** Paterson Zochonis v. Elder Dempster, [1923] 1 K. B. 420 ; Pratt v. Patrick, [1924] 1 K. B. 438.

725. *Add. Annotation :* **Refd.** Baker v. Steam Shipping Co. (1921), 126 L. T.

775. *Add. Annotation :* **Refd.** Percy v. C Corpn., [1922] 2 A. C. 299.

777. *Add. Annotation :* **Refd.** Percy v. C Corpn., [1922] 2 A. C. 2

Part VI.—Carriage of Passengers' Luggage.

804a. Luggage put in luggage van—By order of official.]—EHINGER v. SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD., No. 851a, *post.*

810. *Add. Annotation :—Generally,* **Mentd.** Compania Martiartu v. Royal Exchange Assce., [1923] 1 K. B. 650.

811. *Add. Annotations :—As to* (1) **Refd.** Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis, [1924] A. C. 522 ; Pratt v. Patrick, [1924] 1 K. B. 488.

813. *Add. Annotation :*—**Refd.** Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis, [1921] A. C. 522.

830. *Add. Annotations :—As to* (1) **Refd.** [illegible] v. S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. *As to* (2) **Refd.** Ehinger v. S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. *As to* (3) **Consd.** Ehinger v. S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678.

851a. [illegible]—Pltf., who was a passenger with a ticket from Paris to London *via* Dover, & thence by the railway of defts. railway co., took an additional ticket from the second defts., the Pullman Car Co., for a Pullman car forming part of the train between Dover & London. The Pullman car ticket stated that the Pullman Car Co. accepted no liability for passengers & that co. did all that was r to bring this condition to pltf.'s [illegible] *In* [illegible] *of fare.*] *Held:* the [illegible] for any mistake of fact or law committed by [illegible] course of their [illegible] v. C. [illegible] CORPN., [1922] S. C. (H. L.) 144. **SCOT.**

PART V. SECT. 3, SUB-SECT. 5.

q 1. [illegible].)—GRAND TRUNK PACIFIC COAST S.S. CO. v. SIMPSON (1922), 63 S. C. R. 361 ; 65 D. L. R. 614 ; [1922] 2 W. W. R. 320. —**CAN.**

PART V. SECT. 7.

RY. CO. (1921), 70 D. R. 738 ; 30 B. C. R. 340.—**CAN.**

to

HOWE v. NIAGARA ST. CATHARINES & TORONTO RY. CO., [1925] 2 D. L. R. 115 ; 30 Can. Ry. Cas. 95 ; 56 O. L. R. 202 ; *revsg.*, [1924] 4 D. L. R. 339 ; 55 O. L. R. 387.—**CAN.**

m 1. [illegible] *Removal exposing passenger to danger—Carrier liable.*)—HOWE v. NIAGARA ST. CATHARINES & TORONTO RY. CO., [1925] 2 D. L. R. 115 ; 30 Can. Ry. Cas. 95 ; 56 O. L. R. —**CAN.**

PART V. SECT. 8.

779 1. *Scope of* [illegible] *with a warranty—Tender of* [illegible] *counterfeit coin-*

PART VI. SECT. 3, SUB-SECT. 1.

o 1. [illegible] *Sent back by returning after arrival at* [illegible] SMITH v. [illegible] 2), 65 D. L. R. 486.— **CAN.**

notice. At Dover pltf. took a seat in the Pullman car, but an official refused to allow her to take her suit-case with her & directed a porter to put it in the luggage vestibule at the end of the car. There was no evidence in whose employment the official was, or as to the exact relationship between the two defts. cos. On the arrival of the train in London the luggage was unloaded by the Pullman car officials, but pltf.'s suit-case could not be found. In an action against both cos. :—*Held :* as a railway co. contracted as insurers of passengers' luggage except where the loss was caused by the passenger's own default, the railway co. were liable, but as there was no evidence that lack of care, if any, by the Pullman Car Co.'s officials in unloading had contributed to the loss, the Pullman Car Co. were not liable.—EHINGER v. SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD. (1922), 38 T. L. R. 678 ; 66 Sol. Jo. 633.

858. *Add. Annotations :*—**Consd.** Werner *v.* Det Bergenske Dampskibsselschaft (1926), 134 L. T. 573. **Reld.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

863. *Add. Annotations :*—**Reld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263 ; Nunan *v.* Southern Ry., [1923] 2 K. B. 703 ; Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646 ; The Refrigerant, [1925] P. 130.

866. *Add. Annotations :*—**Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. **Apld.** Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305. **Reld.** Nunan *v.* Southern Ry., [1923] 2 K. B. 703.

Part VII.—Carriage of Animals.

885. *Add. Annotation :*—**Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1923] 2 K. B. 712.

890. *Add. Annotation :*—**Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

893. *Add. Annotation :*—**Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

Part VIII.—Carriage of Explosives and Dangerous Goods.

895. *Add. Annotation :*—**Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

896. *Add. Annotations :*—*As to* (1) **Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (2) **Folld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (3) **Reld.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton [1923] 1 K. B. 31.

896a. ——.]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *ante*.

Part IX.—Measure of Damages.

910. *Add. Annotations :*—**Reld.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690. **Mentd.** Hall *v.* Pim (1926), 32 Com. Cas. 46.

Part X.—Statutory Control of Carriers' Business.

954a. **Side entrance to—Refusal to re-open.**]—In deciding an application for the provision of reasonable facilities under 1854 Act, s. 2, & of reasonable facilities & conveniences under 1921 Act, s. 16 (1), the ct. must be satisfied that in refusing such facilities & conveniences the railway co. are acting without due regard to the proper discharge of their obligations, & the facility or convenience asked for will not be ordered where it is only for the benefit

PART VI. SECT. 6, SUB-SECT. 4.

855 iii. —— —— *Inexperienced* of to travel. to from clause on limiting defts.' 3 R.

PART VII. SECT. 2.

co. dismissed, as there was no connecting the cause of injury with any alleged negligence, & the cause of the damage was purely a matter of 3 W. W. R. 927 ; 33 B. C. R.

-TURNER v. RY. CO., [1922] 2 W. W. R. 859 ; 66 D. L. R. 51.

at point PACIFIC RY. 3 W. W. R. 186 ; 62 D. R. 15 Sask. L. R. 1.—CAN.

of a special class of persons who form a small proportion of the travelling public. Where it is sought to restore a former convenience & conditions have changed, there is nothing in the fact that it was afforded before, & the question will be decided on its merits.

Therefore where an application was made for an order for the re-opening of a subsidiary side entrance to the station of the Midland Ry. Co. at N. which had been closed in pursuance of a general policy of "closed" stations adopted by the co., & it was shown that only 16 per cent. of the passengers using the station, who were mainly season & weekly ticket holders, would be likely to use such entrance, & that no general public inconvenience existed, the ct. refused to make any order.—NOTTINGHAM CORPN. v. MIDL. Ry. Co. (1922), 128 L. T. 539; 67 Sol. 404; 21 L. G. R. 71; 17 Ry. & Can. Tr. Cas. 72.

955. *Add. Annotation:* — **Consd.** Nottingham Corpn. v. Mid. Ry. (1922), 128 L. T. 539.

958. *Add. Annotation:—As to* (3) **Consd.** Nottingham Corpn. v. Mid. Ry. (1922), 128 L. T. 539.

976a. —— Refusal to accept privately owned wagons.]—Where a railway co. is always ready to provide an adequate supply of wagons for the conveyance of coal from stations on their system, their refusal of an application that they should accept privately owned wagons does not constitute a refusal to afford reasonable facilities for the receiving, forwarding, & delivery of traffic on their railway, or the subjection of appcts., or of the traffic in which they are interested, to undue or unreasonable prejudice or disadvantage.—CHARRINGTON, GARDNER, LOCKETT & CO., LTD. v. SOUTHERN RY. CO. (1926), 42 T. L. R. 758.

980. *Add. Annotation:—As to* (1) **Consd.** Charrington, Gardner, Lockett v. Southern Ry. (1926), 42 T. L. R. 758.

1010a. —— To continue former facilities—Pending decision as to rights of parties.]—Upon an application for an interlocutory injunction ordering that certain former facilities for receiving & running through passenger coaches should be continued pending a decision as to the rights of the parties:—*Held:* this not being an application to restrain a threatened act, regard should be made to the balance of convenience, & upon the facts, no interlocutory order should be made.—GREAT CENTRAL RY. CO. v. LONDON & NORTH WESTERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 89.

1015a. —— Necessity for submission to Rates Tribunal of schedule for standard workmen's fares.]—*Re* STANDARD CHARGES SCHEDULES, No. 1323a, *post.*

1080. *Add. Annotation:—Generally,* **Mentd.** Brocklebank v. R., [1924] 1 K. B. 647.

1096a. —— Regulation affecting one class of goods only—Lower rate necessary in public interest.]—PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1219a, *post.*

1098. *Add. Annotation:—As to* (1) **Refd.** York Corpn. v. Leetham, [1924] 1 Ch. 557.

1166a. Rebate on sidings rate.]—Upon a complaint of undue preference it was admitted that appcts., whose works at S. were connected by a private siding with defts.' railway, paid the same rates as if their traffic used that station, while two of their competitors, whose respective works at B., ten miles from S., were also connected by private sidings with defts.' railway, received a rebate of 2½*d.* per ton off the B. station rates on traffic similar to that of appcts. Appcts. called no evidence. The railway co., while submitting that the *onus* of proof had not shifted on them under 1888 Act, s. 27 (1), called evidence & put in tables based on the Pidcock principle with the object of showing that the value of the private siding services rendered to appcts. at S. was in excess of the amounts included in their rates for station terminals at that station & also of the value of the respective private siding services rendered to appcts.' competitors at B. after allowing for the rebate:—*Held:* without deciding whether the *onus* had shifted to the railway co., but inclining to the view that it had, the Pidcock principle had been properly applied in the dissection of the respective rates, & there was no preference of appcts.' competitors.—PRENTICE BROTHERS, LTD. v. LONDON & NORTH WESTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 177.

1169. *Add. Annotation:—As to* (3) **Refd.** Charrington, Gardner, Lockett v. Southern Ry. (1926), 42 T. L. R. 758.

1171. *Add. Annotation:*—**Refd.** Prentice v. L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1175a. —— Adoption of exceptional rates.]—PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *post.*

1184. *Add. Annotation:—As to* (1) **Consd.** Port of Manchester Warehouses v. Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Cas. 54.

Add. Annotations:—As to (1) **Consd.** Prentice v. L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177. **Refd.** Port of Manchester Warehouses v. Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Cas. 54.

1219a. —— Injunction—Rate quoted but not actually made.]—Appcts. were owners of a bonded warehouse situated in Trafford Park, Manchester, in close proximity to, but not on, the premises of the Manchester Ship Canal Co. The latter co. also owned a similar warehouse within their dock area at Manchester. A large consignment of cigarettes was conveyed over the Ship Canal to appcts.' warehouse, & was thence consigned to London over the railways of resp. cos., who charged a rate of 107*s.* per ton in two-ton lots, this being the ordinary Manchester town rate, whereas for similar traffic consigned from the warehouse of the Ship Canal Co. they quoted a rate of 51*s.* 6*d.*, the latter being the Liverpool to London rate, which was governed by competitive shipping rates. Upon a complaint that the Manchester Ship Canal Co. were being unduly preferred the above difference in rates was sought to be justified by the railway cos. on the ground that, the

ports of Manchester & Liverpool being in competition, the lower rate was necessary in order to secure for Manchester in the public interest traffic which otherwise would go to Liverpool, & that the only practical way in which to distinguish between goods consigned from Manchester Town & Manchester Port respectively was to draw a line between goods on the premises of the Ship Canal Co. & those which had passed out of the control of that co.:—Held: (1) both rates were properly charged under the circumstances, & the difference between them was justified; (2) where a railway co. quotes a rate constituting an undue preference & asserts a right & intention of charging the same the ct. has jurisdiction to interfere by injunction without waiting till such charge is actually made.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 54.

1236. *Add. Annotation:* — **Refd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

1245a. **"Rolling stock"—Transit of empty wagons needing repair on change of ownership.**]—Under the heading "Rolling Stock" of the "General Railway Classification of Goods, 1921," if there is a transit because of a change of ownership or because of a change in the sphere of operations, the full rate for the conveyance of empty wagons is chargeable; if the cause of the transit is repairs only, the half-rate is chargeable; if the repairs are only an accompaniment of the transit due to change of ownership, the full rate is chargeable.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INCE WAGON & IRONWORKS CO., LTD. (1924), 131 L. T. 220; 40 T. L. R. 551, C. A.

1285. *Add. Annotations:*—*As to* (1) **Refd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93; Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31.

1286. *Add. Annotations:*—*As to* (1) **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31. *As to* (2) **Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93.

1287. *Add. Annotations:*—**Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93. **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

1323. *Add Annotations:*—**Refd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102; R. *v.* Leinster, [1921] 1 K. B. 311.

SECT. 6.—**EXCEPTIONAL RATES AND FARES** (Vol. VIII., p. 207).

1323a. **Under 1921 Act—Meaning of "standard" & "exceptional."**]—The expression "standard" as applied to charges in Part III. of the above Act is the correlative or complementary term to "exceptional," &, there being therefore no other alternative, every chargeable rate, fare, or charge for conveyance must necessarily be included in one or other of the above categories. Railway cos. are therefore required, under sect. 30 of the above Act, to submit to the Rates Tribunal forms of schedules for standard season tickets & workmen's fares.—*Re* STANDARD CHARGES SCHEDULES (1923), 17 Ry. & Can. Tr. Cas. 147.

SECT. 7.—**OWNER'S RISK RATES** (Vol. VIII., p. 207).

1323b. **Conveyance of goods by passenger train at owner's risk—Application for reduction of rate—Difference in risk negligible—Whether ground for two scales.**]—Appcts. were consignors of gramophone records in the form of flat discs by passenger train. Resps. conveyed these discs at full parcels scale, but under owner's risk conditions. Appcts. claimed that since the discs were conveyed at owner's risk, a reduction should be made from the full parcels scale. It was admitted that when packed by the manufacturers the risk of breakage in transit was negligible. Resps. contended that in the case of goods carried by passenger train the difference between the owner's risk rate & the co.'s risk rate was not intended as a measure of the difference of risk:—*Held:* the difference in the risk to the railway cos. under the two sets of conditions being negligible, on the analogy of 1921 Act, s. 46 (3), there was no ground for directing that there should be two scales, but the discs, when properly packed, should be carried at co.'s risk, &, when not properly packed, at owner's risk. "Properly packed" means packed according to reasonable regulations made by the railway cos., the question of reasonableness to be settled by the Tribunal in case of difference.—BRITISH MUSIC INDUSTRIES FEDERATION *v.* CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 121.

1323c. —— —— **Grounds for ordering.**]—Revised scales of rates based on the "zone" principle for the carriage of parcels by passenger train at co.'s risk & owner's risk respectively were put into force by resp. cos. in Nov. 1918, & were subsequently twice increased in 1920 by uniform percentage additions in accordance with directions of the Minister of Transport. In May, 1923, new & reduced scales for the above traffic were introduced, whereby the above increases of 1920 were reduced in unequal proportions in order to remove what resp. cos. considered to be anomalies between the co.'s risk & owner's risk scales, with the result that the reductions made in the charges under the owner's risk scale were considerably less than those made in the charges under the co.'s risk scale. Upon an application under 1921 Act, s. 60, to reduce the rates for parcels containing sausages, etc., consigned by passenger train at owner's risk:—*Held:* looking to the circumstances in which the above percentage increases had been recommended & imposed & subsequently continued by 1921 Act, s. 60, the railway cos. were not entrusted with them for any purpose connected with the adjustment of relationships between scales of charge but for the purpose of meeting increased expenses, & in the absence

of special circumstances the proper practice was to give equal reduction to all; taking the above owner's risk scale of Nov. 1918, & not that of 1914, as sought by appcts., as a basis of calculation, the owner's risk rates by passenger train on appcts.' above traffic should not exceed those in force in Sept. 1920, as reduced, by 25 per cent.—SAUSAGE MANUFACTURERS' ASSOCN. v. LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., GREAT WESTERN RY. CO., SOUTHERN RY. CO., & CHESHIRE LINES COMMITTEE (1924), 18 Ry. & Can. Tr. Cas. 59.

1326a. —— Charges imposed by Ministry of Transport.]—Appcts. claimed reductions in the charges made by resps. for the detention of ordinary wagons & sheets, which were in the case of wagons 3*s.* per day for the first two days after the expiration of the free periods allowed for loading & unloading & thereafter 5*s.* per day, & in the case of sheets 6*d.* & 1*s.* for the like periods. These charges had been imposed on & after Jan. 1, 1920, by an order of the Minister of Transport, made in accordance with a recommendation of the Rates Advisory Committee, with the object of diminishing wagon detention & traders to exercise more diligence in load & unloading them. The charges in force in 1913 had been 1*s.* 6*d.* per day for wagons & 3*d.* per day for sheets after the free periods then given. Appcts. also claimed that in reckoning the above periods Saturday should be treated as half a day. Resps. contended that the charges complained of were reasonable, & also that it was not open to the ct. to reverse the policy of the Minister of Transport in making a differentiation between the first two days following the free periods & subsequent days:—*Held:* (1) the ct. had jurisdiction to modify the charges complained of; (2) having regard to the value of wagons & sheets as compared with 1913, the loss of profit to the railway cos. arising from detention, the standing & overall charges & the extra expenses of shunting & occupation of siding involved, the charges of 3*s.* per day for wagons & 6*d.* per day for sheets, while on the high side, were not unreasonable, but the additional charges of 2*s.* & 6*d.* per day upon wagons & sheets respectively after the expiration of the first two days beyond the free periods were no longer justified, & should be discontinued, & the existing arrangements with regard to Saturdays should not be interfered with.—BRITISH HAY TRADERS' ASSOCN. v. LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., SOUTHERN RY. CO., GREAT WESTERN RY. CO., BRITISH INDUSTRIES FEDERATION v. SAME (1925) 18 Ry. & Can. Tr. Cas. 169.

1330. *Add. Annotation:—As to* (3) **Consd.** G. W. Ry. v. Laing (1922), 28 Com. Cas. 100.

1331a. —— Congestion caused by increased traffic—Insufficiency of unloading sidings.]—Pltf. co. had on their railway system at P. a small junction station, where there was a siding with sufficient accommodation for unloading the normal goods traffic consigned to that station. Defts. were contractors who were interested in one of three local building schemes which were started about the same time, involving a large increase in the goods traffic consigned to P. Owing to the congestion brought about in P. station by this increased traffic, & the fact that the unloading siding could only accommodate a limited number of wagons at a time, a number of the wagons arriving with goods at P. on defts.' account had to be put into storage sidings, to await their turn to be taken into the proper siding to be unloaded. Great delay in the discharge of wagons was caused thereby, but all the delay occurred at the storage sidings before the wagons were put into the unloading siding. Pltf. co. claimed from defts. exceptional charges for the detention of wagons in the storage sidings, under an implied contract or for accommodation or services provided or rendered by pltfs. to defts. within the scope of pltfs.' undertaking by the desire of defts.:—*Held:* as, on the facts of the case, the wagons were not put into the storage sidings at the desire of defts. they were not liable to pay the exceptional charges claimed.—GREAT WESTERN RY. CO. v. LAING (J.) & CO., LTD. (1922), 30 T. L. R. 93; 28 Com. Cas. 100, C. A.

1337. *Add. Annotation:—Generally,* **Refd.** Prentice v. L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1337a. ——.]—PRENTICE BROTHERS, LTD. v. LONDON & NORTH EASTERN RY. CO., No. 1106a, *ante.*

1337b. —— Terminal charges not in fact made.]—Appcts. carried on business as timber merchants at a private siding about half a mile from resps.' station at R. They made no use of the station for their traffic. On an application to reduce the rates on appcts.' traffic on the grounds (1) that they were excessive, inasmuch as they were the same as those charged for similar traffic which made use of the station at R., & (2) that the rates in fact included charges for the use of the station, & resps. were not entitled to make any charge over & above the charge for conveyance:—*Held:* (1) the conveyance of appcts.' traffic started from or ended at a siding in the R. station, & resps. were entitled to charge for any services prior or to such conveyance, & such services were in fact rendered & the charges were not excessive.

(2) The ct. will not infer that station terminals are being paid simply because a siding rate & a station rate are the same in amount. It is only open to the ct. to do so when comparable traffics are passing from the station & the siding under such rules.—DIXON (T. & M.) LTD. v. LONDON, MIDLAND & SCOTTISH RY. CO. (1924), 18 Ry. & Can. Tr. Cas. 46.

1342. *Add. Annotation:—As to* (1) **Consd.** G. W. Ry. v. Laing (1922), 39 T. L. R. 93.

PART X. SECT. 9, SUB-SECT. 1.

sq. *Right of Minister of Transport to fix free time for detention—Under Ministry of Transport Act, 1919 (c. 50), s. 3.*]—NORTH BRITISH RY. CO. v. CO. OF SCOTLAND, LTD., S. C. (H. L.) 132; 59 Sc. L. R. 275.—**SCOT.**

g i. ——.]—R. v. FRANK A. GILLIN CO., LTD., [1923] Exch. C. R. 1; 70 D. L. R. 635.—**CAN.**

g ii. —— *Cars excepted from Rules—"Cars stored on carrier's or private track"—"Private cars on private track of car owner."*]—TORONTO HAMILTON & BUFFALO RY. CO. v. STEEL CO. OF CANADA, LTD., 55 O. L. R. 63.—

1349. *Add. Annotation:—As to* (2) **Reld.** Dixon *v.* L. M. & S. Ry. (1924), 18 Ry. & Can. Tr. Cas. 46.

1349a. —— **Application for increase—Before "appointed day"—1921 Act, s. 60.**]—The Railway Rates Tribunal has jurisdiction under the proviso to the above sect. to entertain, prior to "the appointed day" to be fixed under that Act, an application by a private siding owner for an increase in a rebate allowed him & for a consequent reduction in charge, & that jurisdiction is not qualified or excluded by the provisions of sect. 61 of the above Act, as to charges in connection with private sidings, the expression "charges" in sect. 60 including not only gross charges, but also the net charges payable by a trader after allowing for any rebate to which he may be entitled.—BRITISH EXTRACTING CO., LTD., BRITISH SOAP CO., LTD., & BRITISH CREAMERIES, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 102, C. A.

Annotations: **Apld.** British Hay Traders' Assocn. *v.* L. M. & S. Ry., L. & N. E. Ry., Southern Ry. & G. W. Ry., British Industries Federation *v.* Same (1925), 18 Ry. & Can. Tr. Cas. 169.

SECT. 12.—REDUCTION OF RATES
(Vol. VIII., p. 217).

1377a. **Who may apply for—Trader "interested"—Warehouseman & forwarding agent.**]—*Appcts., who were warehousemen & forwarding agents at Trafford Park, Manchester, & who had unsuccessfully applied to the Railway Comrs. in respect of an alleged undue preference founded on the same facts, applied for a reduction in a rate of 106s. 7d., formerly 107s., charged upon cigarettes consigned in two-ton lots from their Trafford Park warehouse, which was near to, but outside, the Manchester Docks, to King's Cross, London, upon the ground that the corresponding rate from Liverpool was 54s. 6d., provisionally reduced to 50s. The lower rate was also charged on similar traffic consigned from Manchester Docks, while the higher rate was the ordinary Manchester town rate. Appcts. contended that where traffic as to which the conditions were in all respects alike is sent from two places A. & B. in the same district to the same destination, the same railway co. shall not charge a higher sum from A. than from B., unless the distance of the destination in the case of A. is greater than the distance in the case of B., provided that the rate in the case of A. is a productive rate. They admitted that conditions could not be treated as in all respects alike, if in the one case there was competition which did not exist in the other. Respts. objected that appcts. were not interested traders within 1921 Act, s. 60, & that the rate complained of, which was the ordinary Manchester town rate, was reasonable:—Held:* (1) while something in the nature of a direct interest must be shown, the interest of appcts. in the above charges was sufficiently direct to entitle them to prosecute these proceedings; (2) in deciding what was a reasonable rate to be charged to appcts., regard should be had to the following considerations: (a) that it was not enough for a trader to show that without a reduction in rate he could not carry on a particular branch of his business; (b) that when railway cos. declared that in their own interests they could not grant facilities or reductions in rates, it would not be right for that ct. to compel them to adopt such a course of business unless appcts. showed that the railway cos. were mistaken; (c) that it was not intended by 1921 Act to establish the principle of equal mileage rates for all places & the consequent adoption of exceptional rates based on competition by water or road as the standard for all rates whether such competition existed in other places or not, & therefore that the existence of a low exceptional rate, not being in fact an undue preference, while a fact to be considered, was not alone a sufficient ground for ordering the reduction of a rate for goods in competition with those having the benefit of the low rate; (3) applying the above principles & taking all the circumstances into account, appcts. should be allowed a rate of 72*s.* 6*d.* subject to any general revision of rates.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO., & GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 95.

1377b. **Grounds for ordering—Necessity for primâ facie case.**]—Confectionery in bottles & jars was carried by the railway cos. originally at co.'s risk, & subsequently under certain agreed packing conditions. In 1920 the cos., without making any reduction in rates, refused to carry confectionery packed as above except at owner's risk, owing to the heavy proportion of claims against them for damage. They continued to carry confectionery not contained in bottles & jars at co.'s risk. Upon an application for a reduction in the rates for confectionery when contained in bottles & jars:—*Held:* (1) an appct. for a reduction in rates must make a *primâ facie* case for the same; (2) such a case had been made upon the above facts; (3) the cos. were not precluded from making special conditions by reason of the fact that they for some time had carried the above goods without conditions; (4) while certain losses in respect of confectionery not contained in bottles & carried at co.'s risk were borne by the cos., which losses did not arise in the case of confectionery in bottles carried at owner's risk, the saving to the cos., *e.g.* 4 or 5 per cent., was not sufficient to justify a reduction in rate.—MANUFACTURING CONFECTIONERS' ALLIANCE, INCORPORATED *v.* CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 135.

1377c. ——.]—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *ante*.

1377d. —— **Experimental rate.**]—Upon an application for an experimental reduced rate of 40*s.* per ton for flax straw in full train loads for a transit of approximately 200 miles, resp. railway cos. offered for a period of five months a rate of 45*s.*, plus siding haulage charge. The ordinary class rate was 88*s.* 2*d.*,

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PART X. SECT. 11, SUB-SECT. 3.

1365 ll. —— *Long-standing voluntary toll.*)—Where an increase in a long-standing voluntary toll is sought, the onus is on the carrier to establish its reasonableness.—NATIONAL DAIRY COUNCIL *v.* GRAND TRUNK & CANADIAN PACIFIC RY. COS. (MILK RATE CASE) (1919), 26 Can. Ry. Cas. 113.—CAN.

less 12½ per cent. Similar traffic was being carried to the same destination from places forty or fifty miles away at approximately the same rate as that offered:—*Held:* the rate should be 45s. *Qu.*: whether the Tribunal ought to take into account the possibility that an experimental rate will result in bringing a large future traffic.—MARSH v. GREAT EASTERN & GREAT WESTERN RY. Cos. (1922), 17 Ry. & Can. Tr. Cas. 129.

1377e. —— **Removal of flat-rate additions imposed by Minister of Transport.**]—Upon applications to remove certain flat-rate additions to the rates on appcts.' traffic which had been imposed by the Minister of Transport in exercise of his powers under Ministry of Transport Act, 1919 (c. 50), s. 3 (1) (*c*):—*Held:* (1) the ct. would not assume that the Minister was wrong in imposing such flat-rate additions; (2) it was not competent to the ct. to remove such flat-rate additions on the ground that the reasons given in support of their imposition by the former Rates Advisory Committee were not applicable to appcts.' traffic; (3) the rates on appcts.' traffic were not excessive, notwithstanding that the percentage increase resulting from such flat-rate additions was greater on traffic carried at low mileage rates than on that carried at higher mileage rates, & that larger reductions in rates had been given to blast furnace than to appcts.' *i.e.*, coal, traffic.

(4) A rate is not necessarily excessive because a railway co. are not handing back on balance to the traders all the savings that they are making in reduced expenses.—MONMOUTHSHIRE & SOUTH WALES COAL OWNER'S ASSOCN. v. GREAT WESTERN RY. Co., MONMOUTHSHIRE & SOUTH WALES COKE OVENS & BYE-PRODUCTS WORKS ASSOCN. v. SAME, SOUTH WALES PATENT FUEL MANUFACTURERS' ASSOCN. v. SAME (1923), 18 Ry. & Can. Tr. Cas. 1.

1377f. —— **Reductions granted to other interests.**]—Upon an application for the removal of a flat-rate increase of 2*d.* per ton, being part of a larger increase which originally had been imposed on appcts.' traffic in coal, coke & patent fuel in accordance with a second general revision of rates directed by the Minister of Transport which had since been voluntarily reduced by respts., the following grounds were relied upon by appcts. in support of their case: (1) that a greater proportionate reduction in rates had been given to the traffic of certain admittedly necessitous industries than to their traffic; (2) that their traffic, & in particular their short distance traffic, had increased in density since the above increase in rates, thereby producing an exceptional profit for respts.; & (3) that they apprehended in the future an intensive foreign competition which a reduction in railway rates would assist them to meet:—*Held:* (1) the reductions in rates granted by respts. to the traffic of other industries were justified & did not establish a case of hardship or injustice to appcts.; (2) while it was doubtful as to how far the increase in coal traffic had resulted in increased profit to resp. cos., the period of prosperity in appcts.' trade which was mainly due to the abnormal European political situation was passing away; (3) in an application for a reduction of a rate under 1921 Act, s. 60, the *onus* lay upon an appct. to show the existence of some element of unfairness or of hardship amounting to unfairness, & appcts. had not discharged that onus by alleging that a reduction in rates would assist.—MINING ASSOCN. OF GREAT BRITAIN v. LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. Cos., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) v. SAME (1924), 18 Ry. & Can. Tr. Cas. 14.

Annotation:—Generally. **Mentd.** Dixon v. L. M. & S. Ry. (1924), 18 Ry. & Can. Tr. Cas. 46.

1377g. —— **Abolition of free storage facilities.**]—Appcts., the owners of a warehouse at Trafford Park, Manchester, claimed that a rate of 10*s.* 11*d.* per ton for sugar from Liverpool to their private siding at Trafford Park, being the same amount as the corresponding rate from Liverpool to respt. co.'s Oldham Road station at Manchester, should be reduced by an amount equal to the cost incurred by respts. in providing terminal accommodation & services, including twenty-eight days' free warehousing, at their Manchester station. No sugar had been consigned by rail to appcts.' warehouse, nor was there any evidence that any trader desired to consign sugar to it. Prior to the war respts. had given fourteen days' free storage at Manchester for sugar in view of similar free accommodation provided by competing water-carriers from Liverpool to Manchester. This facility having been withdrawn by respts., they had lost as a result a large part of their sugar traffic from Liverpool to Manchester, &, therefore, as from Nov. 1923, had restored the above free storage for an extended period of twenty-eight days: *Held:* the ct. had no jurisdiction to abolish the facility of free storage, there was no evidence that the 10*s.* 11*d.* rate to Trafford Park was unreasonable or excessive, & there was no presumption that the rate when compared with the corresponding rate to Oldham Road station was unreasonable, because the latter included free storage at that station. PORT OF MANCHESTER WAREHOUSES, LTD. v. LONDON, MIDLAND & SCOTTISH RY. Co. (1925), 18 Ry. & Can. Tr. Cas. 81.

1377h. ——.]—Upon an application that the rates on molasses intended to be used for cattle feeding which, with certain exceptions, was in Class 1 of the 1891 2 classification, should be reduced & placed on the same basis as the rates for oilcake & meals, which were in Class 3 of that classification: *Held:* there was no evidence that the rates complained of were unjust or unreasonable except by comparing them with the treatment of another article in another class, & the ct. had not power at that stage to alter the classification.—NATIONAL ASSOCN. OF CORN & AGRICULTURAL MERCHANTS v. LONDON, MIDLAND & SCOTTISH RY. Co., CROSFIELD'S OIL & CAKE CO., LTD. v. LONDON, MIDLAND & SCOTTISH RY. Co. (1925), 18 Ry. & Can. Tr. Cas. 97.

1377i. **Burden of proof—On applicant.**]—MINING ASSOCN. OF GREAT BRITAIN v. LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. Cos., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) v. SAME, No. 1377f, *ante*.

1377j. Power of railway company during transitional period until "appointed day"—To raise reduced rates.]—Under 1921 Act, s. 60, the rates in existence on Aug. 15, 1921, are maximum rates, & the railway cos. are entitled to reduce them, & to raise them again without applying to the Railway Rates Tribunal, if by so doing they do not exceed the maximum.—TATE & LYLE, LTD. v. LONDON & NORTH EASTERN RY. CO. & LONDON MIDLAND & SCOTTISH RY. CO. (1926), 43 T. L. R. 49, C. A.

What rates—Owner's risk rates.]—*See* Nos. 1323b, 1323c, *ante*.

—— **Charges for detention.**]—*See* No. 1326a, *ante*.

Part XI.—Remedies of and against Carriers.

1390. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

1397. *Add. Annotation :*—**Mentd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

1398. *Add. Annotation :—As to* (1) **Refd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

1449. *Add. Citation :*—91 L. J. K. B. 39.

Add. Annotations :—**Refd.** Anderson *v.* Equitable Life Assce. Soc. of the United States (1926), 134 L. T. 557; Dexters *v.* Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348.

PART XI. SECT. 2, SUB-SECT. 1.

st. *Consignee—Damage to goods en route—Owner having paid damage to consignee.*]—Where an owner of goods had indorsed a bill of lading to the buyer:—*Held :* he had parted with all his rights to obtain damages from the carrier. The fact that the owner paid the indorsee the damages suffered by the goods *en route* did not deprive the latter of his right of action against the carrier.—FORD MOTOR CO. *v.* UNION S.S. CO., [1925] 1 D. L. R. 265; [1924] 3 W. W. R. 718.—**CAN.**

CHARITIES.

Part I.—Charitable Purposes.

1. *Add. Annotations :—As to* (1) **Consd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460. **Reld.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; Jackson *v.* Voss, [1923] 2 K. B. 357; Brighton College *v.* Marriott (1924), 69 Sol. Jo. 229. *As to* (2) **Consd.** A.-G. *v.* National Provincial Bank, [1924] A. C. 262; Verge *v.* Somerville, [1924] A. C. 496; Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121; R. *v.* Income Tax Special Comrs., *Ex p.* Headmasters' Conference, Same *v.* Same, *Ex p.* Incorporated Assocn. of Preparatory Schools (1925), 41 T. L. R. 651; Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460. **Reld.** Barber *v.* Chudley (1922), 92 L. J. K. B. 711; R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237; *Re* Ludlow, Bence-Jones *v.* A.-G. (1923), 93 L. J. Ch. 30; *Re* Shakespeare Memorial Trust, Lytton *v.* A.-G., [1923] 2 Ch. 398; *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362. *Generally*, **Mentd.** Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550.

1a. ——.]—Verge *v.* Somerville, No. 199b, *post*.

2. *Add. Annotation :* —**Reld.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

3a. —— **Motive immaterial.**]—(1) Motive is immaterial in considering whether a bequest is charitable.

(2) A gift to provide a stained glass window in a church is a good charitable gift even though the motive may be said to be neither to beautify the church nor benefit the parishioners, but merely to perpetuate the memory of testatrix & her relatives.

(3) Where a gift is made for a particular charitable purpose which is sufficiently provided for without the gift, the gift must be applied *cy près*.—*Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243; 92 L. J. Ch. 292; 128 L. T. 790; 67 Sol Jo. 313.

4a. —— —— **Question for court.**]—To be valid a charitable bequest must be for the public benefit, & the trust must be capable of being administered & controlled by the ct. The opinion of the donor of a gift or the creator of a trust that the gift or trust is for the public benefit does not make it so, the matter is one to be determined by the ct. on the evidence before it.—*Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237; 92 L. J. Ch. 326; 129 L. T. 124; 39 T. L. R. 203; 67 Sol. Jo. 313.

12a. —— —— —— **Beneficiaries formerly helped by testator.**]—*Re* Shepherd, Smithem *v.* Shepherd (1921), 152 L. T. Jo. 18.

17. *Add. Annotation :*—**Mentd.** *Re* Southerden, Adams *v.* Southerden, [1925] P. 177.

22. *Add. Annotation :*—**Folld.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

23. *Add. Annotation :*—**Reld.** Verge *v.* Somerville, [1924] A. C. 496.

23a. —— —— **Trade union certified to be war charity—Necessity for registration under War Charities Act, 1916 (c. 43).**]—The National League of the Blind of Great Britain & Ireland, a registered trade union whose funds were derived from subscriptions of members, & gifts by the public, was certified by the Charity Comrs. as a charity for the blind, but had not been registered as a charity under the above Act, nor under Blind Persons Act, 1920 (c. 49). Applt. having been convicted of having solicited & obtained money from members of the public :—*Held :* the League was a charity as well as a trade union, & required to be registered under both those Acts, & the conviction must be affirmed.—Barber *v.* Chudley (1922), 92 L. J. K. B. 711; 128 L. T. 766; 87 J. P. 69; 21 L. G. R. 111, D. C.

23b. —— —— **"Oldest respectable inhabitants".—Valid.**]—Testator gave the income to be derived from all his securities to A., for her life, & after her decease to "the oldest respectable inhabitants in G. to the amount of 5*s.* per week each" :—*Held :* the amount of the gift implied poverty, &, coupled with the use of the word "oldest," implying age, was sufficient to render the gift a good charitable bequest.—*Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52; 91 L. J. Ch. 480; 127 L. T. 272; 66 Sol. Jo. 368.

27. *Add. Annotation :*—**Consd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

27a. —— ——.]—Testatrix gave the income of certain shares in a public co. for the education of children of employees of the co. & gave the income of further shares in the co. for the benefit of incapacitated employees, the income in each case to be applied by the governors of the co., in their discretion :—*Held :* both gifts were good charitable bequests, the first being for promoting education & the second for the alleviation of poverty.—*Re* Rayner, Cloutman *v.* Rennaiet (1920), 89 L. J. Ch. 360; 122 L. T. 577; 84 J. P. 61.

29. *Add. Annotation :*—**Consd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

45. *Add. Annotation :*—**Reld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

46. *Add. Annotation :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

PART I. SECT. 1.

1 vi. —— *Estate Duty Assessment Act*, 1914, s. 8 (5).]—The word "charitable" in the above sect. is to be construed in its legal & not its popular sense.—Chesterman *v.* Federal Taxation Comr., [1926] A. C. 128; 95 L. J. P. C. 39; 134 L. T. 369, 42 T. L. R. 121.—**AUS.**

3 ii. —— *Purpose not source.*]—In determining whether a gift to an assocn. is a gift for charitable purposes, the ct. may inquire into the objects of the assocn. & if these are found to be charitable within Stat. Eliz. the ct. may hold the gift to be for charitable purposes.—Perpetual Trustee Co., Ltd. *v.* Shelley (1921), 21 S. R. N. S. W. 426; 38 N. S. W. W. N. 132.—**AUS.**

47a. **Nursing home—Persons of moderate means—Gift charitable.**]—Testator made the following gift in his will: "I give & bequeath all the residue & remainder of my estate not otherwise disposed of by this my will to: (a) such institution, society or nursing home, or nursing homes, or similar institutions as assist or provide for persons of moderate means such as clerks, governesses & others who may not be able or eligible to benefit under the National Health Insurance Act, Old Age Pensions, or other Act of a like character to have either surgical operations performed together with medical treatment or medical treatment alone on payment of some moderate contribution; (b) the Royal National Lifeboat Institution; (c) the Lister Institute of Preventive Medicine; (d) & such other funds, charities & institutions as my exors. in their absolute discretion shall think fit; & I direct that such residue shall be divided amongst the legatees named in the paragraphs (a), (b), (c), & (d) lastly hereinbefore contained in such shares & proportions as my trustees shall determine." It was admitted that the objects under (b) & (c) were charitable. On the question whether the residue was validly disposed of by the will or failed in whole or in part for uncertainty:—*Held:* (1) the objects included under paragraph (a) were charitable since the means of the recipients would necessitate their being unable without the bounty of testator to procure the treatment of which they might stand in need; (2) the objects specified under heading (d) being for such indefinite charitable & non-charitable objects as the exors. should think fit were not exclusively charitable, & therefore though a trust for charitable & non-charitable indefinite purposes indiscriminately failed by reason of uncertainty, this trust being of a part of a fund for charitable purposes & another part for non-charitable indefinite purposes the ct. could ascertain what the parts were.—*Re* CLARKE, BRACEY v. ROYAL NATIONAL LIFEBOAT INSTITUTION, [1923] 2 Ch. 407; 92 L. J. Ch. 629; 129 L. T. 310; 39 T. L. R. 433; 67 Sol. Jo. 680.

48. *Add. Annotation:*—**Consd.** Chesterman v. Federal Taxation Comr. (1925), 42 T. L. R. 121.

49. *Add. Annotation:*—**Consd.** Chesterman v. Federal Taxation Comr. (1925), 42 T. L. R. 121.

57. *Add. Annotation:*—*As to* (2) **Apld.** *Re* Gray, Todd v. Taylor, [1925] Ch. 362.

66. *Add. Annotation:*—**Reld.** Brighton College v. Marriott (1924), 69 Sol. Jo. 229.

69. *Add. Annotation:*—**Reld.** *Re* Tetley, National Provincial & Union Bank of England v. Tetley, [1923] 1 Ch. 258.

73a. **—— Trust to erect national theatre—& revive English classical drama—Valid.**]—(1) The Shakespeare Memorial Trust was established to erect & endow a Shakespeare Memorial National Theatre, with the object of performing Shakespeare's plays, reviving English classical drama, & stimulating the art of acting:—*Held:* the trust was a good charitable trust, on the ground either that the objects were for the advancement of education or that they came within the class of purposes beneficial to the community other than by way of the relief of poverty or the advancement of education or religion referred to by LORD MACNAGHTEN in *Income Tax Special Purposes Comrs.* v. *Pemsel*, [1891] A. C. 531.

(2) At the time when a donation of £70,000 was made to the charity, part of which was applied by the charity in the purchase of a site for the theatre, no annual subscription had been received, but within only nine days of that time the first annual subscription was received. On the subsequent sale of the site, the question arose whether, in those circumstances, the consent of the Charity Comrs. was required to the sale by the charity:—*Held:* notwithstanding that in the inception of its formation it was contemplated that the charity should be supported by annual subscriptions as well as by income from endowment, & notwithstanding that there was an interval of nine days only between the donation & the first of the annual subscriptions, the charity was not at the time when the donation was received a mixed charity within 1853 Act, s. 62; & as it was, therefore, not exempted from the jurisdiction of the Charity Comrs., their consent to the sale by the charity was required.—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) v. A.-G., [1923] 2 Ch. 389; 92 L. J. Ch. 551; 130 L. T. 50; 39 T. L. R. 610, 676; 67 Sol. Jo. 809.

73b. **Bequest to provide sweets—For all children within parish—Not confined to those attending school—Not valid.**]—Testator by his will, after leaving money for prizes for the best-conducted school children in the parish, left money to provide "a pennyworth of sweets each for all boys & girls below the age of fourteen resident within the parish," & he directed that the income of the residue of his estate should be applied in awarding annual prizes to residents for the best-kept gardens & cottages:—*Held:* since there was no provision as to the gift of sweets being confined to children who had attended school, that gift was not charitable & was void, but the gift to provide prizes for the best-kept gardens & cottages was a good charitable gift as it was one for the benefit of the community.—*Re* PLEASANTS, PLEASANTS v. A.-G. (1923), 39 T. L. R. 675.

75. *Add. Annotation:*—**Apprvd.** Chesterman v. Federal Taxation Comr. (1925), 42 T. L. R. 121.

78. *Add. Annotations:*—**Reld.** *Re* Clarke, Bracey v. Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* King, Kerr v. Bradley, [1923] 1 Ch. 243.

82. *Add. Annotation:*—**Reld.** *Re* Tetley, National Provincial & Union Bank of England v. Tetley, [1923] 1 Ch. 258.

94. *Add. Annotation:*—**Reld.** *Re* Hummeltenberg, Beatty v. London Spiritualistic Alliance (1923), 92 L. J. Ch. 326.

117. *Add. Annotation:*—**Mentd.** *Re* Manners, Manners v. Manners, [1923] 1 Ch. 230.

119. *Add. Annotation:*—**Mentd.** Ward v. Van der

Loeff, Burnyeat *v.* Van der Loeff, [1924] A. C. 653.

129. *Add. Annotation* :—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

137. *Add. Annotation* :—**Mentd.** Nicholson *v.* England, [1926] 2 K. B. 93.

157. *Add. Annotations* :—*As to* (1) **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225. **Reld.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

195a. **Shakespeare Memorial Trust—Erection of theatre—Revival of English classical drama—Valid.**]—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., No. 73a, *ante*.

196. *Add. Annotation* :—*As to* (1) **Reld.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

197. *Add. Annotation* :—*As to* (1) **Foll.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

199a. **Promotion of physical efficiency of army—Encouragement of sport—Valid.**]—By his will testator gave a sum of £3,000 to form the nucleus of a regimental fund for his regiment "for the promotion of sport, including in that term only shooting, fishing, cricket, football, & polo." He also thereby gave directions as to the management of the fund. Later in the will he directed the payment of a further sum of £2,000, in the events which happened, "to the aforesaid Sporting Fund" to be held upon the same terms as the former legacy:—*Held*: the gifts were gifts for the purpose of promoting the physical efficiency of the army, & were valid charitable gifts.—*Re* GRAY, TODD *v.* TAYLOR, [1925] Ch. 362; 94 L. J. Ch. 430; 133 L. T. 630; 41 T. L. R. 335; 69 Sol. Jo. 398.

199b. **Repatriation of soldiers—After war service—Valid.**]—(1) A valid charitable trust may exist although in its administration the benefit is not confined by the donor to the poor to the exclusion of the rich.

A resident in New South Wales bequeathed his residuary estate "unto the trustees for the time being of the 'Repatriation Fund' or other similar fund for the benefit of the New South Wales returned soldiers." At the date of the will, & of testator's death, there was established under statutes of the Commonwealth of Australia a repatriation fund for Australian soldiers generally, but there was no repatriation fund, or similar fund, for New South Wales soldiers:—*Held*: (2) the gift created a valid charitable trust; (3) the trustees of the Commonwealth statutory repatriation fund were not trustees of the charity, & the settlement of a scheme had been rightly directed.—VERGE *v.* SOMERVILLE, [1924] A. C. 496; 131 L. T. 107; 40 T. L. R. 279; 68 Sol. Jo. 419; *sub nom.* VERGE *v.* SOMERVILLE, A.-G. FOR AUSTRALIA *v.* SOMERVILLE, 93 L. J. P. C. 173, P. C.

206. *Add. Annotation* :—*As to* (1) **Dbtd.** *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237.

210. *Add. Annotation* :—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

213. *Add. Annotation*:—**Reld.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

213a. **Encouragement of gardening—Charitable.**]—*Re* PLEASANTS, PLEASANTS *v.* A.-G., No. 73b, *ante*.

215. *Add. Annotation* :—*As to* (2) **Reld.** Verge *v.* Somerville, [1924] A. C. 496.

215a. —— **Of Jews to Palestine—Gift to Jewish National Fund—Valid.**]—A summons asked whether deft. co., the Jüdischer Nationalfonds, Ltd., or some other & what co. was referred to in the devise & bequest in the codicil to testator's will of the residuary estate to the Jewish National Fund, & whether the same was a valid charitable gift. By a codicil to his will made in 1919 testator who died shortly after declared: "whereas it is my desire that members of my family shall make their home in Palestine working & living on the land, I give, devise, & bequeath all the residue of my estate subject as aforesaid to the Jüdischer Nationalfonds which is one of the instruments of the Zionist Organisation, for the purpose of purchasing land there, & enabling such members of my family as are in a direct line of descent from my father, who may desire, to settle in Palestine subject generally to the regulations & conditions that may be necessary for the common weal":—*Held*: the co. was beneficially entitled to the fund to be applied by them so far as was necessary for the purpose indicated by testator, & as to the balance for the general purposes of the co.—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM (1924), 131 L. T. 21; 68 Sol. Jo. 320.

225. *Add. Annotations* :—**Consd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243. **Reld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

238a. —— **In memory of testatrix—Valid.**]—*Re* KING, KERR *v.* BRADLEY, No. 3a, *ante*.

241. *Add. Annotation* :— **Reld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

242. *Add. Annotation* :— **Reld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

245. *Add. Annotation* :— **Reld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

247. *Add. Annotation* :— **Reld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

249. *Add. Annotation* :— **Mentd.** Toates *v.* Toates, [1926] 2 K. B. 30.

251. *Add. Citation* :—[1912] 1 Ch. 29.

Add. Annotations :—*As to* (2) **Reld.** *Re* Kuypers, Kuypers *v.* Kuypers, [1925] Ch. 244. *Generally*, **Mentd.** *Re* Sikes, Moxon *v.* Crossley (1926), 43 T. L. R. 57.

255. *Add. Annotation* :—*As to* (2) **Reld.** Verge *v.* Somerville, [1924] A. C. 496.

265. *Add. Annotation* :—**Reld.** Chesterman *v.*

Federal Taxation Comr. (1925), 42 T. L. R. 121.

265a. Gift to Jewish National Fund—To enable testator's relations to settle in Palestine.]—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM, No. 215a, *ante*.

266. *Add. Annotation :—As to* (1) **Consd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

270. *Add. Annotation :—***Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

Part II.—Assurances for Charitable Purposes.

316. *Add. Annotation :—***Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

384. *Add. Annotation :—***Refd.** Cross *v.* Imperial Continental Gas Assocn., [1923] 2 Ch. 553.

397. *Add. Annotation :—***Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

398. *Add. Annotation :—***Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

421. *Add. Annotation :—***Mentd.** Harper *v.* Hedges, [1923] 2 K. B. 314.

429. *Add. Annotation :—* **Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

472. *Add. Annotations :—* **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

551. *Add. Annotation :—***Mentd.** Nicholson *v.* England, [1926] 2 K. B. 93.

574. *Add. Annotation :—***Mentd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

591. *Add. Annotation :—Generally,* **Mentd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

634. *Add. Annotation :—***Mentd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

638. *Add. Annotation :—***Mentd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

Part III.—Charitable Trusts.

653. *Add. Annotations :—***Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

657a. ——— ———.]—A gift to A. "who will at her death dispose of it in such charitable ways for good to result from my hard work in accumulating the property handed over for her use only & to do as she may wish in her lifetime," gives A. only a life estate, & on her death, whether before or after testator, the fund becomes applicable for charitable purposes & is not distributable as on an intestacy.—*Re* CAMMELL, PUBLIC TRUSTEE *v.* A.-G. (1925), 69 Sol. Jo. 345.

687. *Add. Annotations :—As to* (1) **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Apld.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

691a. ——— ——— Fund deposited in names of bishop & two archdeacons—Income not drawn upon—Date of deposit coinciding with creation of new diocese.]—On June 29, 1888, money was deposited in a bank in the names of the Bishop of Wakefield & two archdeacons. In May, 1888, the Diocese of Wakefield was newly formed, & H. was enthroned on June 25, 1888, as first bishop of that diocese. The income of the fund so deposited was not drawn upon, & the fund with £900 accumulated interest was found intact by the exors. of the archdeacon, who was the survivor of the three persons in whose names the money had been deposited. The fund was not contributed to by those in whose names it was deposited :—*Held :* in such circumstances the exors. of the archdeacon who was the survivor were not beneficially entitled to the fund, but the fund was one subject to charitable trusts.—PEASE *v.* HOW (1922), 91 L. J. Ch. 334 ; 126 L. T. 629 ; 66 Sol. Jo. 250.

702a. "Missionary purposes"—Valid—Court entitled to regard missionary work of legatee.]—Testatrix bequeathed her residuary estate "for missionary purposes" to J. :—*Held :* (1) the ct. could admit evidence that testatrix had often met J. at conferences of Christian workers & discussed religious subjects with him, & that before she made her will she had sent him considerable sums of money to aid him in the work in which he was so engaged, which was that of pastor of a church belonging to a body created solely for evangelistic purposes ; (2) having regard to that evidence, the gift was not void for uncertainty but was a good charitable gift.—*Re* REES, JONES *v.* EVANS, [1920] 2 Ch. 59 ; 89 L. J. Ch. 382 ; 123 L. T. 567.

PART III. SECT. 2. SUB-SECT. 2.—A. (a).

ab. *Gift "for some good public purpose" ... "Such as emergency hospital, women's home or park with urinary"—Valid.*]—(NIX *v.* HOGAN & VICTORIA COURT, (1925), 35 B. C. R. 286.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A. (b).

ae. *"To be invested in war charities at trustees' discretion to be selected by trustees"—Valid.*]—*Re* HAMMOND (1921), 68 D. L. R. 590 ; 51 O. L. R. 149.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B.

i l. *"Charitable or other deserving institutions"—As trustees think fit—Void.*]—CAMPBELL'S TRUSTEES *v.* CAMPBELL, [1921] S. C. (H. L.) 12 ; 58 Sc. L. R. 69.—**SCOT.**

b l. *"Benevolent, charitable & religious institutions"—As trustees think proper—In limited locality—Valid.*]—EDGAR, ETC. *v.* CARSKELLS, [1922] S. C. 395 ; 59 Sc. L. R. 304.—**SCOT.**

el. ———.]—By the law of Scotland a trust for "charitable or benevolent" purposes is a trust for "charitable" purposes alone.—JACKSON'S TRUSTEES *v.* INLAND REVENUE, [1926] S. C. 579 ; 10 Tax Cas. 460.—**SCOT.**

705. *Add. Annotations :*—**Consd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651 ; *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225 ; *Re* Hummelteuberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237 ; *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258 ; Verge *v.* Somerville, [1924] A. C. 496.

708. *Add. Annotation :*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

716. *Add. Annotation :*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

720. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Chapman, Hales *v.* A.-G. (1922), 91 L. J. Ch. 527 ; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225 ; *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

721. *Add. Annotations :*—**Consd.** A.-G. *v.* National Provincial Bank, [1924] A. C. 262. **Refd.** Verge *v.* Somerville, [1924] A. C. 496.

723. *Add. Annotation :*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

724a. **" Charitable or public institutions "—At discretion of trustees—Void.**]—By his will dated May 3, 1918, testator, after making certain specific & pecuniary bequests & giving an annuity to his wife, devised & bequeathed all his real & personal estate not thereby otherwise disposed of upon trust for conversion & investment of the net residue as therein mentioned. He directed his trustees " to hold the residuary moneys & investments upon trust, subject to payment of the wife's annuity, to pay & apply the same for the benefit of one or more charitable or public institutions in Wales as they may deem advisable in their absolute discretion & in such proportions & shares as they may deem fit " :—*Held :* the non-charitable objects of the residuary gift were too vague, & the whole gift failed for uncertainty.—*Re* DAVIS, THOMAS *v.* DAVIS, [1923] 1 Ch. 225 ; 92 L. J. Ch. 322 ; 128 L. T. 735 ; 39 T. L. R. 201 ; 67 Sol. Jo. 297.

725. *Add. Annotation :*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

731. *Add. Annotations :* — **Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407 ; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225 ; A.-G. *v.* National Provincial Bank, [1924] A. C. 262 ; Verge *v.* Somerville, [1924] A. C. 496.

734. *Add. Annotation :*—**Refd.** Verge *v.* Somerville, [1924] A. C. 496.

735. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

735a. **" Charities & institutions "—" As executors in their absolute discretion think fit "—Void.**] —*Re* CLARKE, BRACEY *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION, No. 47a, *ante*.

739. *Add. Annotations :*—**Consd.** Caldwell *v.* Caldwell (1921), 91 L. J. P. C. 95 ; A.-G. *v.* National Provincial Bank, [1924] A. C. 262. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

740a. **" Charitable purposes " directed by testator or for such objects as executor selects—Void.**] —*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a, *post*.

740b. **" Patriotic purposes or charitable institutions or objects "—At discretion of trustees—Void.**] —Testator by his will directed his trustees to apply one-fifth of his residuary estate " for such patriotic purposes or objects & such charitable institution or institutions or charitable object or objects in the British Empire " as they in their absolute discretion should select :—*Held :* the words of the gift must be read disjunctively, " patriotic purposes " were not necessarily charitable, & the gift was void for uncertainty.—A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, [1924] A. C. 262 ; 40 T. L. R. 191 ; 68 Sol. Jo. 235 ; *sub nom. Re* TETLEY, A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, 93 L. J. Ch. 231 ; 131 L. T. 31, H. L. ; *affg.* S. C. *sub nom. Re* TETLEY, NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. *v.* TETLEY, [1923] 1 Ch. 258, C. A.

Annotation :—**Refd.** Verge *v.* Somerville, [1924] A. C. 496.

745. *Add. Citation :* 91 L. J. P. C. 95.

748. *Add. Annotation : As to* (1) **Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

751. *Add. Annotation :*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

751a. **" Objects of charity or any other public objects "—" In parish of F." —Valid.**]—By her will made in 1880 testatrix bequeathed all her residuary estate to trustees upon trust to apply such parts thereof as were applicable by law for charitable legacies, in such manner as her trustees should, in their absolute discretion, think fit, " for the benefit of the schools, & charitable institutions, & poor, & other objects of charity, or any other public objects in the parish of F." : —*Held :* it was a good charitable gift of the whole residuary estate, & was not to be read disjunctively. *Re* BENNETT, GIBSON *v.* A.-G., [1920] 1 Ch. 305 ; 89 L. J. Ch. 209 ; 122 L. T. 578 ; 84 J. P. 78 ; 64 Sol. Jo. 201.

Annotation : **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

755a. **" Hospital or other charitable or benevolent institution "—Valid.**]—By his will, made in 1917, testator gave his residuary estate to trustees upon trust to apply the same & the income thereof in providing or endowing, or assisting in providing or endowing, any hospital wards, beds, or cots, or other like or similar objects, as his trustees should in their absolute discretion think fit, in memory of his late wife, " for, at, or in connection with, any hospital or convalescent home or other charitable or benevolent institution " ; & testator expressed the wish, but not so as to impose any legal obligation on his trustees, that such hospital or other charitable or benevolent institution should be in, or connected with, the parish of St. Marylebone, London, or at, or in connection with, the town of Kilmarnock : —*Held :* the word " hos-

pital " where it was first used in the will was used in an adjectival sense, & applied to the following words " wards, beds, or cots " ; the primary intention of testator was to provide or endow the same, & the places where they could be provided or endowed must be hospitals or convalescent homes or other charitable institutions, & the words " benevolent institution " must be construed as *ejusdem generis*, with " hospital " ; & therefore the bequest constituted a good & valid charitable gift.—*Re* LUDLOW, BENCE-JONES *v.* A.-G. (1923), 93 L. J. Ch. 30, C. A.

762. *Add. Annotation* :—**Mentd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460.

763. *Add. Annotation* :—**Folld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

765. *Add. Annotation* :—*As to* (2) **Consd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

769. *Add. Annotation* :—**Consd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

769a. Gift for maintenance & upkeep of masonic temple—Residue to masonic charities—Whole gift void.]—By a codicil to his will testator directed his exors., on the death of his wife, to pay from his estate to the trustees of a masonic temple, erected by him to the memory of his son, £10,000, to be invested & the interest applied by the trustees, in their full & sole discretion, to the maintenance & upkeep of the masonic temple, & the balance, if any, to be applied in favour of any masonic charities which the trustees might select. The masonic temple was to be used for masonic ceremonies, & smaller rooms for lodge meetings, business & meetings of a social but not political character. Upon a summons to ascertain whether the legacy was valid or not :—*Held* : (1) the decisions in the " tomb cases " were inapplicable ; (2) the whole income of the fund being charged with a trust, at the discretion of the trustees, for a primary object which was invalid, the ct. was not entitled to control this discretion, & institute an inquiry at chambers as to the amount of income necessary to be applied for maintenance & upkeep of the temple, so that the gift of the balance would be valid ; (3) as the primary gift was not sufficiently defined, the whole legacy was void for uncertainty.—*Re* PORTER, PORTER *v.* PORTER, [1925] Ch. 746 ; 95 L. J. Ch. 46 ; 133 L. T. 812.

771. *Add. Annotations* :—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Reld.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

772. *Add. Annotation* :—**Reld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

776. *Add. Annotation* :—**Folld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

786. *Add. Annotations* :—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Reld.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

794. *Add. Annotations* :—**Apld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Reld.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

795. *Add. Annotations* :—**Apld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Reld.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

810. For " appointment " read " apportionment."

B. Names of Charities omitted or left blank (Vol. VIII., p. 305).

For " *See* Nos. 1419 *et seq.*, *post*," read " *See, also*, Nos. 1419 *et seq.*, *post*," & add as follows :—

841a. Gift to " two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my executors "—Valid.]—Testatrix, who died in 1919, left her foreign property to " two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors." :—*Held* : the gift ought to be construed, not as a gift to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re* SMITH, BLYTH *v.* A.-G. (1920), 36 T. L. R. 416, C. A.

856. *Add. Annotation* :—**Reld.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

865. *Add. Citation* :—3 Leon. 18.

875. *Citation* :—For " 2 W. R. 154 " read " 21 W. R. 154."

891a. —— Gift to " Soldiers' Crippled Homes "—Three claimants—Legacy divided.]—Testatrix by her will bequeathed part of her estate to " Soldiers' Crippled Homes." In response to advertisements three institutions put in claims :—*Held* : as there was nothing to show that testatrix knew about these institutions, the fairest course would be to divide the bequest equally between the three.—*Re* HUSBAND, NEAVE *v.* BARNARDO'S HOMES NATIONAL INCORPORATED ASSOCN. (1923), 58 L. Jo. 600.

924. *Add. Annotation* :—**Reld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

932. *Add. Annotation* :—**Reld.** Brighton College *v.* Marriott, [1926] A. C. 192.

999. *Add. Annotation* :—**Reld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

1014. *Add. Annotation* : — **Mentd.** Harper *v.* Hedges, [1923] 2 K. B. 314.

1026. *Add. Annotation* :—**Mentd.** *Re* Southerden, Adams *v.* Southerden, [1925] P. 177.

1041. *Add. Annotation* :—**Reld.** *Re* Robinson, Wright *v.* Tugwell, [1923] 2 Ch. 332.

1041a. —— Condition subsidiary to main charitable object—Performance of condition likely to defeat main charitable object—Condition dispensed with.]—Testatrix, who died in 1889, bequeathed £1,500 towards an endowment for a proposed evangelical church at B., provided certain conditions were carried out. An action was commenced for the administration of her estate, & on the further consideration thereof on Nov. 3, 1891, it appeared that amongst other conditions, which mainly related to the conduct of the services, it was made an " abiding condition " that the black

gown should be worn in the pulpit, —— there should be an alteration in the law rendering it illegal. It further appeared that in compliance with the conditions a church had been erected at B. & the other conditions laid down by testatrix fulfilled, except the condition as to wearing a black gown, which condition was held by the judge to be a continuing condition, but not an illegal one; & accordingly, the fund was carried over to the credit of the action, the separate account of "the £1,500 endowment fund for the proposed B. church," with liberty for the incumbent & all persons interested to apply as to the capital or income thereof. This petition was presented by the present incumbent asking that under a scheme or otherwise the fund in ct. might be transferred to the Ecclesiastical Comrs. Evidence was adduced that the use of the black gown in the pulpit was practically unknown in the diocese of the new church, & that its use was calculated to alienate the congregation & to defeat the main objects of testatrix, namely, the teaching & practice of evangelical doctrine & services:—*Held*: the condition requiring the wearing of a black gown in the pulpit was subsidiary to the main charitable object, namely, the endowment of an evangelical church at B., & as the performance thereof had been shown to be impracticable the condition might be dispensed with & the fund be transferred to the Ecclesiastical Comrs. as part of the endowment of the church so erected as aforesaid.—*Re* Robinson, Wright v. Tugwell, [1923] 2 Ch. 332; 92 L. J. Ch. 340; 129 L. T. 527; 39 T. L. R. 509; 67 Sol. Jo. 619.

1061. *Add. Annotation*:—**Consd.** *Re* Quintin Dick, Cloncurry v. Fenton, [1926] Ch. 992.

1080. *Add. Annotation*:—**Reld.** I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire 42 T. L. R. ——

1099. *Add. Annotation*:—**Consd.** Verge v. Somerville, [1924] A. C. 496.

Add. Citation:—127 L. T. 123.

1115. *Add. Annotation*:—**Consd.** *Re* Deloitte, Griffiths v. Deloitte, [1926] Ch. 56.

1116. *Add. Annotation*:—**Consd.** *Re* Deloitte, Griffiths v. Deloitte, [1926] Ch. 56.

1129. *Add. Annotation*:—**Mentd.** Consett Industrial & Provident Soc. v. Consett Iron Co. [1922] 2 Ch. 135.

1170. *Add. Annotation*:—**Mentd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.

1186a. ——.]—Testator gave the residue of his estate on trust to pay the income to his wife for life & after her death to pay £3,000 to the Royal National Lifeboat Institution in order to defray the cost of building two lifeboats, & he directed that after payment of certain legacies to hospitals the remainder of the residue should be paid to the aforesaid institution for the purpose of keeping the two lifeboats in repair & of replacing them when necessary, & that if the remainder of the residue should be insufficient for this purpose the institution might apply it to its general purposes. The legacy of £3,000 was inadequate to provide two lifeboats: *Held*: on the death of the wife the £3,000 legacy failed & fell into residue, & the institution was entitled to take the whole of the residue, after payment of the legacies to hospitals, & to apply it to its general purposes.—*Re* Beck, Crook v. Royal National Lifeboat Institution (1926), 42 T. L. R. 245.

1189. *Add. Annotation*:—**Distd.** *Re* Beck, Crook v. Royal National Lifeboat Institution (1926), 42 T. L. R. 244.

1200. *Add. Annotation*: **Reld.** *Re* Whitrod, Burrows v. Base, [1926] Ch. 118.

1225. *Add. Annotation*:—**Reld.** Harper v. [1923] 2 K. B. 314.

1227. *Add. Annotation*:—**Consd.** V v. ville, [1924] A. C. 496.

1231. *Add. Annotation*:—**Mentd.** England, [1926] 2 K. B. 93.

Part IV.—Effectuation of Charitable Trusts by means of Schemes and the Cy-près Doctrine.

1252a. —— **No trustees.**]—Verge v. Somerville, No. 1099b, *ante*.

1404. *Add. Annotation*:—**Reld.** *Re* King, Kerr v. Bradley, [1923] 1 Ch. 243.

1412. *Add. Annotation*:—**Reld.** I. R. Soc. for Relief of Widows & O of .. R. Comrs. v. M Soc. for est Riding of Yorkshire 2 T. L. R. (

1424. *Add. Annotation*:—**Reld.** *Re* Chapman, Hales v. A.-G., [1922] 2 Ch. 479.

PART IV. SECT. 1, SUB-SECT. 1.—A. .] St. AUS.

PART IV. SECT. 2, SUB-SECT. 2.—A. 1872 v. — 2 D. L. R. 1166; 56 O. L. R. 676; O. L. R.

PART IV. SECT. 2, SUB-SECT. C. (b).

ed. *Hostel ceasing to* of No O. L. R. by *Re* 1:

PART SECT. 2, SUB-SECT. 2.—D. —.]—An association, which an institution for the ment of the ship. in to change of it was no longer institution usefully, o carry wound to the ct.

approval of a sc for the funds to b of whom & associations, with om to the tions to be filled by persons The ct. in made in

1424a. —— —— Alternative non-charitable gift.] -- Testatrix by her will appointed an exor., & after giving various pecuniary legacies, ding two for charitable purposes, & to her exor., she left in blank the name of her residuary legatee. By a codicil testatrix desired that her residue should be "applied for charitable purposes as I may in writing direct, or to be retained by my exor. for such objects & such purposes as he may in his discretion select, & to be at his own disposal." She left no written directions as to the charities to be benefited :—*Held :* (1) no good charitable trust was declared, the exor. having a discretion to devote the residue to objects & purposes other than ; (2) the trust for those objects & was too indefinite for the ct. to execute, & there being no direct gift to the exor., the added words "to be at his own disposal" were not sufficient to enable the ct. to hold that the exor. took the residue beneficially, & he held it as trustee for the next of kin. *Re* CHAPMAN, HALES *v.* A.-G., [1922] 2 Ch. 479 ; 91 L. J. Ch. 527 ; 127 L. T. 616 ; 66 Sol. Jo. 522, C. A.

See, also, No. 811b, *ante.*

1431. *Add. Annotation :* *As to* (1) **Consd.** *Re* Cammell, Public Trustee *v.* A.-G. (1925), 69 Sol. Jo. 345.

1444a. Fund for erection of stained glass window—Surplus applied to additional stained glass windows.] —*Re* KING, KERR *v.* BRADLEY, No. 3a, *ante.*

1449a. — — —— Alternative non-charitable gift. —*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a, *ante.*

1457a. —— Particular purpose completed—Resulting trust of surplus.]—By his will, made in 1876, testator gave £5,000 Consols to Cambridge University, to be transferred to the University if accepted "upon trust to be applied for the express purpose of carrying on to completion & publication my Etymological Dictionary of Anglicised Foreign Words & Phrases," should the same be incomplete at the time of his decease, they applying the annual dividends towards the completing & publishing of the dictionary. Testator constituted one of his exors. residuary legatee & died in 1880. The University accepted the bequest on the terms & for the purpose specified, & published the dictionary in 1892. After all payments had been made in connection with the publication there remained over a surplus of £1,151 14*s.* 10*d.* Consols & £230 derived from income & sales of the dictionary. Upon a summons by the University asking how this surplus should be applied :—*Held :* in the absence of any general charitable intention to be gathered from the terms of the bequest there was no room for the application of the doctrine of *cy-près*, & there was a resulting trust for testator & those claiming under him of the surplus moneys. *—Re* STANFORD, CAMBRIDGE UNIVERSITY *v.* A.-G., [1924] 1 Ch. 73 ; 93 L. J. Ch. 109 ; 130 L. T. 309 ; 40 T. L. R. 3 ; 68 Sol. Jo. 59.

Part V.—Trust Property after Trust created.

1480. *Add. Annotation :* *As to* (2) **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

1495. *Add. Annotation :* — **Mentd.** Harper *v.* Hedges, [1923] 2 K. B. 314.

1508. *Add. Annotation :* **N.F.** Nicholson *v.* England, [1926] 2 K. B. 93.

1511. *Add. Annotation :* *As to* (2) **Consd.** Toates *v.* Toates, [1926] 2 K. B. 30.

1516. *Add. Annotation :* - **Mentd.** Harper *v.* s, [1923] 2 K. B. 314.

1545. *Add. Annotation :* *As to* (2) **Consd.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394.

1549. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394.

1670. *Add. Annotation :*—*Generally*, **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 74.

Part VII.—Trustees.

1934. *Add. Annotation :* **Mentd.** R. *v.* Income Tax s., *Ex p.* Rank's Trust 1. T.

1935. *Add. Annotation :*—**Mentd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651.

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PART IV. SECT. 2, SUB-SECT. 2.—E.

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PART IV. SECT. 2, SUB-SECT. 3.

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Part IX.—Jurisdiction over Charities.

1998. *Add. Annotation :*—**Reld.** *Re* King, Kerr v. Bradley, [1923] 1 Ch. 243.

2015. *Add. Annotation :*—**Reld.** R. v. All Souls College, Oxford (1681), Skin. 13.

2041. *Add. Annotation :* — **Mentd.** Harper v. Hedges, [1923] 2 K. B. 314.

2113. *Add. Annotation :*— **Mentd.** Salter v. Lask (1923), 130 L. T. 323.

2131. *Add. Annotation :*— **Mentd.** R. v. Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651.

2135. *Add. Annotation :* — **Mentd.** R. v. Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651.

2137. For the existing paragraph substitute the following paragraph :—

Not exempt—Gift of land to mixed charity at date of determination of question by commissioner—Not mixed charity at time of donation.]—In order that a donation or bequest may come within the provision in 1853 Act, s. 62, exempting from the jurisdiction or control of the Charity Comrs. a donation or bequest made to a "mixed charity"—*i.e.* a charity maintained partly by voluntary subscriptions & partly by income from endowment it must be a donation or bequest to a charity which is already, at the date of gift, a mixed charity. It is not sufficient to bring the donation or bequest within the exemption for the charity to become a mixed charity between the date of gift & the determination by the ct. of the question of exemption.

Land within the registered area was conveyed to a charity which at the time, although possessed of other income-bearing land, was not also maintained by any voluntary subscriptions. After the application for registration & pending the determination of the question of exemption by the ct., voluntary [illegible]tions were received & the charity a mixed charity :—*Held :* the land not having been given to a charity which at the date of gift was a mixed charity, was not exempt from the jurisdiction or control of the Charity Comrs., & a restriction must be entered on the register against a disposition of the land without their consent.—*Re* Child Villiers' Application, Villiers v. A.-G., [1922] 1 Ch. 304 ; 91 L. J. Ch. 473 ; 126 L. T. 555 ; 38 T. L. R. 291 ; 66 Sol. Jo. 266, C. A.

[illegible]ation : **Apld.** *Re* Shakespeare Memorial Trust, Lytton

2146a. —— **Land purchased out of donation—Donation before first annual subscription.**]—*Re* Shakespeare Memorial Trust, Lytton (Earl) v. A.-G., No. 73a,

Part X.—Practice.

2224. *Add. Annotation :* **Reld.** Key v. Bastin, [1925] 1 K. B. 650.

2252. *Add. Annotation :* **Reld.** Key v. Bastin, [1925] 1 K. B. 650.

2456. *Add. Annotation :* **Mentd.** Consett Industrial & Provident Soc. v. Consett Iron Co. [1922] 2 Ch. 135.

2503. *Add. Annotation :* **Mentd.** R. v. Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651.

CHOSES IN ACTION.

Part I.—In General.

1. *Add. Annotation :*—**Mentd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

13. *Add. Annotations :* —**Refd.** New York Insce. *v.* Public Trustee, [1924] 2 Ch. 101 ; Brassard *v.* Smith, [1925] A. C. 371 ; Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593 ; Archer-Shee *v.* Baker (1926), 95 L. J. K. B. 929.

19. After this case add "**Patent.**]—*See* PATENTS."

20. *Add. Annotations :*—**Folld.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955 ; **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15.

21. *Add. Citations :*—FAVORKE *v.* STEINKOPFF, [1922] 1 Ch. 174 ; *sub nom. Re* STEINKOPFF, FAVORKE *v.* STEINKOPFF, 91 L. J. Ch. 165 ; 126 L. T. 597.

23. *Add. Annotation :*—**Refd.** New York Life Insce. *v.* Public Trustee (1924), 93 L. J. Ch. 449.

24. *Add. Annotations :* —**Consd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955 ; **Refd.** New York Life Insce. *v.* Public Trustee (1924), 93 L. J. Ch. 449.

25. *Add. Annotation :*—**Apld.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101.

27. *Add. Annotations :*—*As to* (1) **Consd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174. *As to* (2) **Refd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174.

27a. **Assignment executed abroad—Of debt payable in England.**]—Where an assignment of a debt due from an English debtor & payable on demand in England is made in a foreign country between two citizens of that country domiciled there & subject to its laws but is invalid by the law of that country, it is not to be held valid in this country merely because it is in accordance with the requirements of English law.—REPUBLICA DE GUATEMALA *v.* NUNEZ (1926), 95 L. J. K. B. 955 ; 135 L. T. 436 ; 42 T. L. R. 625 ; 70 Sol. Jo. 858.

After this case for "**Assignments executed abroad.**]—*See* Nos. 459–462, 504, 505, *post*," read "——.]—*See, also*, Nos. 459–462, 504, 505."

Part II.—Assignment in General.

29. *Add. Annotation :*—**Refd.** Public Trustee *v.* Elder, [1926] Ch. 776.

33. *Add. Annotation :* **Mentd.** Venn *v.* Tedesco, [1926] 2 K. B. 227.

40. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

Part III.—What may be Assigned.

67. *Add. Annotation :*—**Consd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29.

78. *Add. Annotation :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

82. *Add. Annotation :*—**Refd.** Gray *v.* Spyer, [1922] 2 Ch. 22.

84. *Add. Annotation :*—**Refd.** Norwich Union Fire Insce. Soc. *v.* Colonial Mutual Fire Insce., [1922] 2 K. B. 461.

86. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

91. *Add. Annotation :*—**Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249.

94. *Add. Annotation :*—**Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

118. *Add. Annotations :*—**Refd.** *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113 ; Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

PART I. SECT. 1, SUB-SECT. 2.

d. Add "*revsd.* 17 O. R. 574."
s. Add "*revsd. in part* 4 A. R. 267."

PART III. SECT. 3.

3k. *To construct tramway across grantor's land — Assignable.*]—MCDONALD *v.* FRODSHAM, [1923] N. Z. L. R. 937.—N.Z.

PART III. SECT. 4.

96 l. *Claim to compensation—Damage to lands—Assignable.*]—By erection of a public work, a dam, the Crown expropriated the right to flood the land of V., who subsequently sold the property to H., with the right to recover compensation from the Crown : —*Held :* it was not an assignment of litigious rights, & H. was entitled to recover compensation.—R. *v.* HYE (1921), 60 D. L. R. 173 ; 21 Exch. C. R. 76.—CAN.

PART III. SECT. 5.

100 l. *Promise to pay over proceeds of litigation—Compromise of suit—Effect of agreement.*]—Where there was an assignment of part of the fruits of litigation :—*Held :* even if they were to be regarded as non-existing property at the date of the agreement, the agreement attached upon the money being paid.—VATRAVAYA VENKATA JAGAPATI *v.* POOSAPATI VENKATAPATI (1924), L. R. 52 Ind. App. 1.—IND.

119. ***Add. Annotation :*—Refd.** *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.

124. ***Add. Annotations :*—Consd.** Smith v. Smith, [1923] P. 191; Walls v. Legge, [1923] 2 K. B. 240.

125. ***Add. Annotations :*—Consd.** Smith v. Smith, [1923] P. 191. **Refd.** Campbell v. Campbell, [1922] P. 187.

Part IV.—What amounts to an Assignment.

193. ***Add. Annotation :*—*As to* (1) Refd.** Guatemala (Republica de) v. Nunez (1926), 95 L. J. K. B. 955.

200. ***Add. Annotation :*—Consd.** Bank of Liverpool & Martins v. Holland (1926), 43 T. L. R. 29.

202. ***Add. Annotation :*— Refd.** Bank of Liverpool & Martins v. Holland (1926), 43 T. L. R. 29.

204a. Amount recoverable by assignee limited.]—Deft. owed £285 to W., who owed money to pltf. bank, & W. assigned to the bank the debt owed to him by deft. The assignment, which was in writing, provided that "the amount recoverable under these presents shall not at any time exceed £150." Due notice of the assignment was given to deft. In an action upon the assignment:—*Held*: (1) the assignment was not an assignment of part only of the debt, but an absolute assignment of the whole debt with a proviso that if the bank recovered more than £150 they must hold the balance as trustees for the assignor, & it was a good legal assignment: (2) even if it was an assignment of part only of the debt it would still be a good equitable assignment, & pltfs. were entitled to recover.—BANK OF LIVERPOOL & MARTINS, LTD. v. HOLLAND (1926), 43 T. L. R. 29; 32 Com. Cas. 56.

205. ***Add. Annotations :*—*As to* (1) Refd.** National Provincial & Union Bank of England v. Lindsell, [1922] 1 K. B. 21. ***As to* (3) Consd.** Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.

211. ***Add. Annotation :*—*As to* (1) Refd.** Palmer v. v. Carey, [1926] A. C. 703.

221a. —— Part of debt.]—BANK OF LIVERPOOL & MARTINS, LTD. v. HOLLAND, No. 204a, *ante*.

236. ***Add. Annotation :*—Apprvd.** *Re* Swinburne, Sutton v. Featherley (1925), 70 Sol. Jo. 64.

237. ***Add. Annotations :*—Mentd.** The Torvaete (1922), 128 L. T. 176; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385.

258. ***Add. Annotation :*—Refd.** National Provincial & Union Bank of England v. Lindsell (1921), 91 L. J. K. B. 196.

258a. Agreement to pay proceeds into lender's bank—Advances for purchase of goods.]—By a written agreement made in 1917 a trader was to purchase goods from time to time & resp. was to advance money to pay for them; the trader was to sell the goods & to pay the proceeds to the credit of resp. at his bank; resp., after deducting the amount which he had advanced & one-third of the gross profits, was to pay the remaining two-thirds to the trader. In 1921 the trader became bkpt., & applt. was appointed assignee in the bkpcy. At the time of the bkpcy. a large sum advanced under the agreement had not been repaid, & the trader had in his hands goods purchased under the agreement, & the proceeds of other goods so purchased. Resp. claimed a charge on the above assets in respect of the advances not repaid:—*Held*: as the agreement did not, either contractually or otherwise, create any right of the lender in either the goods or their proceeds, it did not amount to an equitable assignment so as to entitle resp. to the charge claimed.—PALMER v. CAREY, [1926] A. C. 703; 95 L. J. P. C. 146; 135 L. T. 287; [1926] B. & C. R. 51, P. C.

269. ***Add. Annotation :*—Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 46.

307. ***Add. Citations :*—** [1922] 1 K. B. 21; 91

PART III. SECT. 14.

al. *Non-negotiable promissory notes.*)—Promissory notes drawn in such form that they are non-negotiable, can be assigned in the same manner as an ordinary chose in action.—MERCHANTS BANK OF CANADA v. GREENLEES, [1923] 2 W. W. R. 931.—CAN.

PART IV. SECT. 2, SUB-SECT. 1.—A.

205 z. —— —— *Building contract apportioning price between builder & third party.*)—GRANT v. TRAVIS, [1924] 2 D. L. R. 1164; 2 W. W. R. 503.—CAN.

PART IV. SECT. 2, SUB-SECT. 1.—B. (b).

zm. *Authorising payment of sum in hands of garnishee—Order giving effect to verbal assignment.*)—CLARKE BROTHERS, LTD. v. GOODIN & PEDERSON, [1922] 3 W. W. R. 504; 68 D. L. R. 792.—CAN.

223 i. *Assigning money due or to become due—Under contract.*)—It is no objection to an equitable assignment of a claim against a third person that the work upon which the claim is based has yet to be performed.—*Re* MATTHEWS SHEET METAL & ROOFING CO., LTD., *Ex p.* MARTIN [1924] 1 D. L. R. 761; 55 O. L. R. 262; 4 C. B. R. 471.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—A.

246 iv. —— ——.)—*Held*: the order set out in the judgment, in the circumstances, was a good equitable assignment of moneys due from the board of a drainage district to a person who had a contract with it.—STIRLING COLLIERIES, LTD. v. JONES, [1924] 4 D. L. R. 1305; 3 W. W. R. 955.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—B.

256 i. *Directions to agent to sell & pay proceeds into bank—Principal paying for goods by cheques drawn against proceeds.*)—KIDD v. HARDER, McCONNAL v. HARDER, [1924] 4 D. L. R. 516; 2 W. W. R. 293.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—C.

c. Add "*revsd.*, [1921] 1 W. W. R. 839."

PART IV. SECT. 2, SUB-SECT. 3.

zn. *Lodging notes as collateral security.*)—A document providing that certain notes "are lodged with the bank as a general & continuing collateral security for the due payment of all advances made or to be made to me by the bank":—*Held*: not a proper assignment; there is a distinction between lodging a document as collateral security & an assignment.—MERCHANTS BANK OF CANADA v. GREENLEES, [1923] 2 W. W. R. 931.—CAN.

zo. *Indorsement of lien note.*)—*Held*: to constitute a good equitable assignment thereof.—CANADIAN BANK OF COMMERCE v. LA BRASH, [1918] 1 W. W. R. 6; 39 D. L. R. 398; 10 Sask. L. R. 405.—CAN.

PART IV. SECT. 3.

280 i. *Necessity for communication to & assent by assignee—To constitute assignment.*)—A letter assigning moneys must be shown to have been communicated to the assignee before it will be held to constitute an equitable assignment.—GRAIN CO. OF CANADA, LTD. v. MERRILL, [1922] 3 W. W. R. 926; 70 D. L. R. 557.—CAN.

PART IV. SECT. 6.

288 ii. ——.)—LOFTUS v. LANG, [1925] 2 D. L. R. 610; [1925] 1 W. W. R. 1104; 19 Sask. L. R. 337.—CAN.

L. J. K. B. 196; 126 L. T. 319; [1921] B. & C. R. 209.

Add. Annotation:—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

Part V.—Notice of Assignment.

See, now, Law of Property Act, 1925 (c. 20), ss. 130, 137.

313. *Add. Annotation:*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

358. *Add. Annotation:*—*Generally,* **Mentd.** McCreagh *v.* Cox & Ford (1923), 92 L. J. K. B. 855.

417. After this case add "*See, now,* Law of Property Act, 1925 (c. 20), s. 137."

440. *Add. Annotation:*—**Refd.** Knight *v.* Knight, [1925] Ch. 835.

460. *Add. Annotation:*—**Refd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955.

461. *Add. Annotation:*—**Consd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955.

Part VI.—Effect of Assignment.

475. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Bernstein, Barnett *v.* Bernstein (1924), 69 Sol. Jo. 88.

485. *Add. Annotations:*—**Refd.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123; The Koursk, [1924] P. 140; Venn *v.* Todesco, [1926] 2 K. B. 227.

509. *Add. Annotation:*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1922] 2 K. B. 433.

519. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

PART V. SECT. 3, SUB-SECT. 1.

sp. *To guarantor—Notice not given to debtor.*]—DONALD *v.* JUKES, [1921] 2 W. W. R. 208; 56 D. L. R. 692; 60 S. C. R. 652.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.

st. *Of debtor.*]—Notice to the solr. of debtor that the claim against the latter was to be paid to a third party is notice to debtor himself that such claim had been assigned—ST. JOHN & QUEBEC RY. CO. *v.* BANK OF BRITISH NORTH AMERICA & HIBBARD CO. (1921), 67 D. L. R. 650; 62 S. C. R. 346.—**CAN.**

PART V. SECT. 5.

bf. ——— *That alleged assignee had possession of notes.*]—Although debtors may have known that notes were in the possession of a bank, the alleged assignee—*Held*: this was insufficient, being a far different thing from having notice of the assignment, & there was no duty in debtors to inquire of the bank.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931. **CAN.**

PART V. SECT. 9, SUB-SECT. 1.—A. (a) i.

o. Add "*Revsd.* 47 S. C. R. 313; 10 D. L. R. 232; 23 W. L. R. 445.

pi. ———.]—The assignee of an equitable interest in personal estate without notice of an existing earlier assignment will gain priority simply by the act of giving notice to the person who has the legal dominion over the fund before notice is given by an assignee earlier in point of time.—GORDON *v.* GORDON, [1924] 2 D. L. R. 74; 1 W. W. R. 903; 18 Sask. L. R. 187.—**CAN.**

PART V. SECT. 9, SUB-SECT. 1.—A. (b).

ss. *Assignments of money payable under commission certificates—Certificates not assignable—Order for payment given to first assignee—Certificates handed to second assignee.*]—J. I. CASE THRESHING MACHINE CO. *v.* GENERAL MOTORS ACCEPTANCE CORPN., [1924] 4 D. L. R. 1297; 3 W. W. R. 691.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

476 ii. ——— ——— *Money due under agreement for sale—Power to cancel agreement.*]—Where a vendor of land under agreement for sale assigns the moneys due under the agreement for sale & notice of the assignment, equitable or legal, is given to debtor, it is not open to the vendor & debtor to cancel the agreement without the concurrence of the assignee.—UNION BANK OF CANADA *v.* DUTCZAK, [1924] 3 D. L. R. 457; 2 W. W. R. 864.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—A.

u. Add "*revsd. in part,* 4 A. R. 267."

ei. ——— *Of lien.*]—Plff., assignee of three several claims of workmen who had liens under Woodmen's Lien Act, commenced an action in his own name without serving any notice of the assignment upon debtor:—*Held*: plff. could bring an action in his own name without giving the notice referred to in Jud. Act, s. 19 (5).—BARNES *v.* BLACK, [1925] 3 D. L. R. 65; 58 N. S. R. 69.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 2.

550 iii. ——— ———]—SHEPHERD *v.* LIVINGSTON, [1924] 1 D. L. R. 723; 1 W. W. R. 455.—**CAN.**

550 iv. ———.]—MCPHERSON *v.* LEES (ANDREW), LTD., [1926] N. Z. L. R. 523.—**N.Z.**

sb. *Payment to assignee—Money due under agreement for sale—Covenant by assignor to convey on payment.*]—Where a vendor has covenanted in writing with an assignee to convey the land to the purchaser on payment of the full amount of the purchase-money, the purchaser is protected as to title & may safely make his payments to the assignee; & the assignee can sue on the purchaser's covenant to pay contained in the agreement.—UNION BANK OF CANADA *v.* DUTCZAK, [1924] 3 D. L. R. 457; 2 W. W. R. 864.—**CAN.**

PART VII. SECT. 1.

565 iii. ———.]—Even assuming a proper assignment, notes lodged with a bank as a general & continuing security for the due payment of all advances made, or to be made, must be taken by the assignee subject to any equities existing between the original parties.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

565 iv. ——— *Effect of express contract.*]—Notwithstanding Choses in Action Act, R. S. S., 1920 (c. 202), s. 5, debtor can contract with his creditor, for good consideration, that he will not avail himself of his right to set up against the creditor's assignee any

Part VII.—Assignment subject to Equities.

593. *Add. Annotations :*—**Mentd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369; *Re* Pink, Elvin v. Nightingale (1926), 70 Sol. Jo. 1090.

601. *Add. Annotation :*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

Part VIII.—Voluntary Assignments.

613. *Add. Annotation :*—**Consd.** Macedo v. Stroud, [1922] 2 A. C. 330.

634. For "*Held :* (1) as it was the intention of the settlor," etc., read "*Held :* (1) as it was not the intention of the settlor," etc.

Add. Annotation : —*As to* (3) **Consd.** Macedo v. Stroud, [1922] 2 A. C. 330.

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equity existing between the creditor & himself. If the contract which includes the clause not to set up the equities against an assignee was induced by fraud, such clause falls with the contract, except where debtor is estopped as against the assignee from setting up the fraud.—HAMILTON v. RALTON, [1925] 3 D. L. R. 1090; [1925] 3 W. W. R. 136; *revsg.* [1925] 2 W. W. R. 195. **CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

604 (1, ——.)—ROYAL BANK OF CANADA v. GUSTAFSON, [1924] 1 W. W. R. 511; 33 B. C. R. 379. **CAN.**

PART VII. SECT. 2, SUB-SECT. 4.

604 II. Add "*revsd. in part*, 25 A. R. 179."

604 IV. ——.)—ROYAL BANK OF CANADA v. GUSTAFSON, [1924] 1 W. W. R. 511; 33 B. C. R. 379. **CAN.**

PART IX.

q. *Under Assignment of Book Debts Act*, 1923 (c. 29).] *Re* RAPORT, DENISON v. UNION BANK OF CANADA, [1925] 3 D. L. R. 1058; 57 O. L. R. 574; 5 C. B. R. 811. **CAN.**

CLUBS AND OTHER VOLUNTARY ASSOCIATIONS.

Part III.—Constitution and Internal Arrangements.

17. *Add. Annotation :—* **Consd.** Morgan *v.* Driscoll (1922), 38 T. L. R. 251.

20. *Add. Annotation :—As to* (1) **Consd.** Morgan *v.* Driscoll (1922), 38 T. L. R. 251.

38. *Add. Annotations :—* **Consd.** Amalgamated Soc. of Carpenters, Cabinet Makers & Joiners *v.* Braithwaite, General Union of Operative Carpenters & Joiners *v.* Ashley, [1922] 2 A. C. 440. **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

39. *Add. Annotation :—As to* (1) **Refd.** A.-G. *v.* Swan, [1022] 1 K. B. 682.

53a. **—— Claim by member for proportion of—On winding up of club.**]—A limited co. was registered with the object of carrying on a proprietary club, & by the articles H. was appointed governing director for life & the management of the club was vested in her. In 1915 H. granted a lease of premises to the club which was carried on there. In 1918 a subscription of four guineas a year for country members & five guineas for town members was charged, & as from Jan. 1, 1919, an entrance fee of five guineas was imposed. From 1917 to Mar. 25, 1919, a notice stating that the club would be carried on permanently was exhibited by H. On Mar. 11, 1919, H., without notice to the executive committee, issued a writ for arrears of rent, & on recovering summary judgment closed the club. The co. then passed a resolution for voluntary winding up & a liquidator was appointed. A., who was a member of the club, claimed to prove as creditor for general damages & a proportion of her subscription for 1919, B., another member, claimed general damages, the return of her entrance fee & the proportion of her subscription for the current year :—*Held :* A. & B. were entitled to prove, not only for the proportion of their subscriptions of which they had lost the benefit for the current year, but also in respect of damages for the loss of the amenities of the club, & in the case of B. to a return of the entrance fee ; & the damages should be assessed in the case of A. at £7, which included the proportion of her subscription for 1919, & in the case of B. at £14, which also included the entrance fee & proportion of her subscription.—*Re* CURZON SYNDICATE, LTD. (1920), 149 L. T. Jo. 232.

54. For "**Entrance fee payable by instalments**" read "**Entrance fee—Payable by instalments.**"

54a. **—— Claim by member for return of—On winding up of club.**]—*Re* CURZON SYNDICATE, LTD., No. 53a, *ante*.

Part VI.—Debentures.

105. *Add. Citations :-* [1922] 1 Ch. 51 ; 91 L. J. Ch. 93 ; 126 L. T. 225.

Part VII.—Duty Payable by Clubs.

106. *Add. Annotation :—As to* (3) **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

PART II.

88. *Validity of rules.*)—Where the rights or privileges of members of a club are not in any way affected, nor the property of the club in any way injured, the ct. has no jurisdiction to consider the legal validity of the rules of the club, nor to grant an injunction against the commission of acts merely criminal or merely illegal.—WATT *v.* MACLAUGHLIN, [1923] 1 I. R. 112.—IR.

12 ll. —— *Majority of members acting illegally—Injunction.*)—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—CAN.

PART III. SECT. 1, SUB-SECT. 2.

1 l. —— —— *Necessity for unanimous vote or consent of all members.*)—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—CAN.

1 ll. —— ——.)—A rule prescribed that no future motion to open the links for play on Sundays should be passed unless by a majority of two-thirds of those present & voting :—*Held :* the repeal of the rule did not itself require a two-thirds majority.—WATT *v.* MACLAUGHLIN, [1923] 1 I. R. 112.—IR.

PART III. SECT. 2, SUB-SECT. 2.—A.

26 l. *Power to expel for infringing rules.*)—Where a club was registered under Cos. Act :—*Held :* the committee were not in law the directors of the co. & had no authority to exercise the powers of directors to exclude pltf. from membership of the club.—MURPHY *v.* SYNNOTT, [1925] N. 14.—IR.

PART III. SECT. 2, SUB-SECT. 2.—E.

40 ll. —— —— ——.)—A club incorporated under Incorporated Societies Act, 1908, which acting by its executive committee wrongfully & in breach of the club's rules excludes a member from the use of the club's premises, commits a breach of contract & the member is entitled to recover damages. The members of the committee, acting within the scope of their authority, are not personally liable in tort for inducing or procuring such breach of contract.—HENDERSON *v.* KANE & PIONEER CLUB, [1924] N. Z. L. R. 1073.—N.Z.

PART IV. SECT. 1, SUB-SECT. 1.

70 ll. —— *Money lent to lodge.*)—Where a person gives credit to an abstract entity, such as a club or lodge, he can look to those who assumed to act for it & those who authorised or sanctioned that being done, in the absence of anything indicating the contrary.—FINLAY *v.* BLACK, [1921] 2 W. W. R. 907.—CAN.

Part VIII.—Sale of Intoxicating Liquors in Clubs.

109. *Add. Annotation :*— **Reld.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

110. *Add. Annotation :*—**Consd.** Watson *v.* Cully, [1926] 2 K. B. 270.

111a. —— —— Whether in "club"—Temporary premises.]—The word "club" as used in Licensing Act, 1921 (c. 42), s. 4, means the premises of a registered club, & not the assocn. of persons who are members of the club.

Where, on the occasion of a fête, a registered club engaged a room adjoining the ground on which the fête was to be held, & there supplied intoxicants to members otherwise than in the permitted hours :—*Held :* as the room in question was not habitually used for the purposes of the club, no offence had been committed under the above sect.—WATSON *v.* CULLY, [1926] 2 K. B. 270 ; 95 L. J. K. B. 554 ; 135 L. T. 28 ; 90 J. P. 110 ; 42 T. L. R. 529 ; 24 L. G. R. 357 ; 28 Cox, C. C. 191, D. C.

Annotation :—**Reld.** Clarke *v.* Griffiths, Peacock *v.* Same (1926), 95 L. J. K. B. 905.

111b. —— —— —— Additional unregistered premises.]—Applts. were respectively the steward & one of the members of a club which occupied, besides its registered premises, additional premises which were at a considerable distance & which were not registered. At these additional premises the steward supplied to the other applt. beer, which the latter paid for & there consumed. An information having been preferred against the steward for supplying the beer, for consumption off the club premises, otherwise than on the premises of the club, & against the other applt. for unlawfully obtaining the liquor, contrary to Licensing (Consolidation) Act, 1910 (c. 24), s. 94 :—*Held :* as the liquor was not supplied in the registered premises of the club it was not supplied "in a club" within the above sect., & the conviction must be quashed. CLARKE *v.* GRIFFITHS, PEACOCK *v.* GRIFFITHS (1926), 95 L. J. K. B. 905 ; 135 L. T. 58 ; 90 J. P. 151 ; 42 T. L. R. 541 ; 24 L. G. R. 166 ; 28 Cox, C. C. 240, D. C.

Part IX.—Betting and Gaming in Clubs.

136. *Add. Annotation :*—**Reld.** Richardson *v.* Monerieffe (1926), 43 T. L. R. 32.

Part X.—Dissolution of Clubs.

148a. Claims by members of proprietary club—For damages for loss of club amenities—& for proportion of subscriptions—& return of entrance fee.]—*Re* CURZON SYNDICATE, LTD., No. 53a, *ante*.

PART VIII. SECT. 3.

sd. *Right of members to store beer at club.*)—Members of a club on purchasing beer from a Govt. vendor may store it at the club, & the club is entitled to charge a fee for storage & service.—R. *v.* Rock (1923), 32 B. C. R. 67. **CAN.**

sf. "*Distributing*" *beer by servant of club—What amounts to.*)—R. *v.* Rock (1923), 32 B. C. R. 67. **CAN.**

COMPANIES.

Part I.—Nature, Characteristics, Definitions and Classification.

6. *Add. Annotation :—As to* (1) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

11. *Add. Annotations :*—**Consd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33; **Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975; Thomas *v.* Evans, I. R. Comrs. *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 42 T. L. R. 401.

15. *Add. Annotations :*—**Refd.** British Thomson-Houston Co. *v.* Starling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33; Prichard & Constance *v.* Amata (1924), 42 R. P. C. 63.

Part II.—Domicil, Residence and Nationality of Companies.

26a. ——— **Business conducted abroad.**]—A trading corpn. was registered in England under Cos. Acts, but the whole administration of the business of the co. was conducted by directors domiciled & resident in Holland. The register of members was kept at the office in England :—*Held :* the domicil of the co. was not in Holland but in England.—BAELZ *v.* PUBLIC TRUSTEE, [1926] Ch. 863; 95 L. J. Ch. 400; 135 L. T. 763; 42 T. L. R. 696; 70 Sol. Jo. 818.

27. *Add. Annotations :*—**Consd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255.

27a. ———.]—A co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe :—*Held :* a corpn. might have a dual residence, & there was evidence that pltfs. were resident both in New York & in London carrying on business in both places & in both places were subject to the jurisdiction of the cts.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

Annotation :—**Refd.** Swedish Central Ry. *v.* Thompson [1924] 2 K. B. 255.

Part III.—Companies under Companies (Consolidation) Act, 1908, and Similar Acts.

38. *Add. Annotation :*—*As to* (6) **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

44. *Add. Annotation :*—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

67. *Add. Annotation :*—**Mentd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

69. *Add. Annotation :*—**Mentd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

75. For the paragraph "(9) (WARRINGTON, L.J. . . . 1908 Act, s. 82." substitute :—"(9) (LORD SUMNER, LORD DUNEDIN expressing the contrary opinion), an allotment of shares & debentures made before filing a statement in lieu of prospectus as required by 1908 Act, s. 82 (1), is not wholly void."

For the paragraph "(10) (LORD STERNDALE, M.R., . . . was written," substitute :—"(10) Observations of LORD SUMNER as to the practice of the Registrar of Joint Stock Companies, in cases where everything is in order, of antedating the incorporation of a co. to the date of the application for registration."—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) *v.* LEWIS, [1924] A. C. 958; 93 L. J. Ch. 414; 40 T. L. R. 621; 68 Sol. Jo. 663; [1925] B. & C. R. 16; *sub nom. Re* JUBILEE COTTON MILLS, LTD., 131 L. T. 579, H. L.

Annotation :—Generally. **Mentd.** *Re* City Equitable Fire Insce. (1925), 133 L. T. 520.

82. *Add. Annotation :—As to* (1) **Refd.** Jubilee Cotton Mills Official Receiver & Liquidator *v.* Lewis, [1924] A. C. 958.

196. *Add. Annotation :*—**Refd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195.

225. *Add. Annotation :*—**Consd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195.

228. *Add. Citation :—On appeal*, 41 R. P. C. 67, C. A.

PART II.

a 1. ——— *In several places.*]—A co. is to be treated in matters of trade & commerce as resident not only where its principal place of business is, but wherever it has a place of business.—EUREKA *v.* BORDER CITIES IMPROVEMENT CO. (1922), 52 O. L. R. 193.—CAN.

228a. "Harrods" — "R. Harrod."]—The ct. granted an interlocutory injunction to restrain deft. co. from carrying on business under any name comprising the well-known name of pltf. co. on the ground that defts.' use of the name was calculated to lead the public erroneously to believe that defts.' business had some connection with pltfs.' business.—HARRODS, LTD. v. HARROD (R.), LTD. (1924), 40 T. L. R. 195; 41 R. P. C. 74, C. A.

Annotation:—**Expld.** Motor Manufacturers' & Traders' Soc. v. Motor Manufacturers', etc., Insce., [1925] Ch. 675.

228b. "Society of Motor Manufacturers & Traders" —"Motor Manufacturers' & Traders' Mutual Insurance Co."]—A co., carrying on the business of insurance against motor risks, adopted as part of its name the ordinary descriptive words "Motor Manufacturers & Traders," which had already been adopted as part of its name by a society having for its main objects the promotion, encouragement & protection of the motor trade generally. There was no charge of fraud &, in the opinion of the ct., no tangible risk of injury to the society's business reputation owing to the similarity of the names; the names being sufficiently distinguishable & deft. co.'s business wholly different from that of pltf. society: *Held:* pltf. society was not entitled to a monopoly of its descriptive words, or to any relief against deft. co. —MOTOR MANUFACTURERS' & TRADERS' SOCIETY v. MOTOR MANUFACTURERS' & TRADERS' MUTUAL INSURANCE CO., [1925] Ch. 675; 94 L. J. Ch. 410; 133 L. T. 330; 41 T. L. R. 483; 42 R. P. C. 307, C. A.

237. *Add. Annotation:*—*As to* (1) **Consd.** Motor Manufacturers' & Traders' Soc. v. Motor Manufacturers' & Traders' Mutual Insce., [1925] Ch. 675.

238. *Add. Annotations:*—**Refd.** Harrods v. Harrod (1924), 40 T. L. R. 195; Motor Manufacturers' & Traders' Soc. v. Motor Manufacturers' & Traders' Mutual Insce. (1925), 94 L. J. Ch. 410.

251. *Add. Annotation:* **Refd.** Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

255. *Add. Annotations:*—*As to* (1) **Refd.** I. R. Comrs. v. Cornish Mutual Assce. (1924), 41 T. L. R. 70. *As to* (2) **Refd.** South Behar Ry. v. I. R. Comrs., [1925] A. C. 476; *Generally*, **Mentd.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689.

257. *Add. Annotation:* **Refd.** Greenberg v. Cooperstein, [1926] Ch. 657.

265. *Add. Annotations:*—**Consd.** I. R. Comrs. v. Cornish Mutual Assce. (1924), 41 T. L. R. 70. **Mentd.** Brighton College v. Marriott, [1925] 1 K. B. 312.

266. *Add. Annotations:*—*As to* (1) **Apld.** Cornish Mutual Assce. v. I. R. Comrs., [1926] A. C. 281. **Refd.** Greenberg v. Cooperstein, [1926] Ch. 657. *As to* (2) **Refd.** Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners' Assocn. (1926), 135 L. T. 673. *Generally*, **Mentd.** Brighton College v. Marriott, [1925] 1 K. B. 312.

270. *Add. Annotation:*—**Refd.** Greenberg v. Cooperstein, [1926] Ch. 657.

271. *Add. Annotation:*—**Folld.** Greenberg v. Cooperstein, [1926] Ch. 657.

272a. ——— ———.]—An assocn. with four branches was formed to obtain subscriptions from the members of each branch & to lend to members out of the fund so formed money on interest. Each fund, with its accretions of interest, was divided up periodically among the members ratably at a period of the year which differed in each branch. The assocn. & its branches all consisted of more than twenty members. The assocn. was not registered under any Act. Disputes having arisen, a resolution was passed by the members for the dissolution of the assocn., & an action was brought by three members suing on behalf of all members other than defts. against defts., who were the treasurer & secretary of the assocn., claiming administration of the assets of the assocn., an account of the subscriptions received by defts. from members & of their application thereof, payment of the amount found due & other relief. The action was resisted on the ground that the assocn. was illegal & that no relief could therefore be given: *Held:* (1) the assocn. was rendered illegal by 1908 Act, s. 1 (2), as being an unregistered assocn. of more than twenty persons carrying on a business having for its object the acquisition of gain; (2) the ct. was not debarred from affording relief to the members asking for the return of money paid into the hands of agents for application for an illegal purpose by granting an account.—GREENBERG v. COOPERSTEIN, [1926] Ch. 657; 95 L. J. Ch. 466; 135 L. T. 663.

282. *Add. Citation:* 130 L. T. 450.

Add. Annotation: **Mentd.** Imperial Tobacco Co. of India v. Bonman, [1921] A. C. 755.

304. *Add. Annotation:* **Mentd.** Everett v. Griffiths, [1921] 1 K. B. 911.

335. *Add. Annotation:* **Refd.** *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

341. *Add. Annotations:* *As to* (1) **Consd.** Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc., [1925] Ch. 769. *Generally*, **Mentd.** Lapish v. Braithwaite (1924), 40 T. L. R. 857.

343. *Add. Annotation:* *As to* (1) **Refd.** Bank of N. T. Butterfield v. Golinsky, [1926] A. C. 733.

351. *Add. Annotations:* **Apld.** Plantations Trust v. Bilba (Sumatra) Rubber Lands (1916), 114 L. T. 676. **Mentd.** Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc., [1925] Ch. 769.

398. *Add. Annotation:* **Consd.** Agricultural

PART III. SECT. 6.

kl. —— *That company duly incorporated.*]—The fact that a co. incorporated under Cos. Act includes in its name the word "Co-operative," contrary to Co-operative Assocns. Act, 1920 (c. 19), s. 4 (2), does not render it an illegal co., since Cos. Act, s. 23, makes a certificate of incorporation conclusive evidence that the co. was duly incorporated.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. v. BRITISH COLUMBIA FRUIT LANDS, LTD., [1923] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—CAN.

PART III. SECT. 7, SUB SECT. 6.—A. (c).

395 l. *By transfer.*]—An original subscriber of a co. can withdraw his subscription & transfer his share at the first meeting of provisional directors, & where a majority of original incorporators are present & vote at the meeting such withdrawal does not invalidate anything done at the meeting.—*Re* THOMAS W. HARVEY LTD., [1924] 4 D. L. R. 1031.—CAN.

Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

406. *Add. Annotations :*—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. **Reld.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

410. *Add. Annotation :*—**Reld.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

415. *Add. Annotation :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

417. *Add. Annotation :*—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

427. *Add. Annotation :*—**Reld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

430. *Add. Annotation :*—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853

431a. **— —.]**—A collateral obligation imposed by the arts. of assocn. of a co. registered under 1908 Act upon a member of the co., which in certain events involves a liability on the part of that member to take further shares in the co., can be enforced notwithstanding that the liability of the member to contribute in a winding up is limited by the Act under which the co. is registered.

The limitation of liability in respect of shares held is distinct from an obligation collaterally imposed upon a member in certain events to take up further shares which will themselves, when taken up, be entitled to a similar limitation of liability. There is nothing in such a collateral obligation which is *ultra vires* or repugnant to the system of limited liability.—AGRICULTURAL WHOLESALE SOCIETY *v.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY, [1925] Ch. 769; 94 L. J. Ch. 397; 133 L. T. 274; 41 T. L. R. 470; 69 Sol. Jo. 557, C. A.; *affd. sub nom.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY *v.* AGRICULTURAL WHOLESALE SOCIETY, [1927] A. C. 76, H. L.

432a. **—— Unless arising from wilful neglect or default.]**—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *post*.

432b. **— — Unless arising from wilful or wrongful act or default.]**—One of the arts. of assocn. of a co. provided that "The directors & other officers shall be indemnified by the co. against all costs, losses, & expenses incurred by them in or about the discharge of their respective duties, except such as may happen from their own respective wilful or wrongful act or default" :—*Held:* the above art. did not protect a director from liability for negligence resulting in loss to the co.—*Re* CITY OF LONDON INSURANCE CO., LTD. (1925), 41 T. L. R. 521; 69 Sol. Jo. 591.

433. *Add. Annotation :*—*As to* (1) **Consd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

437. *Add. Annotation :*—*As to* (1) **Reld.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

560. *Add. Annotation :*—**Mentd.** Bisset *v.* Wilkinson (1926), 42 T. L. R. 727.

568. *Add. Annotation :*—**Reld.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

570. *Add. Annotation :*—**Mentd.** India Rubber Gutta Percha & Telegraph Works *v.* County Golf Co. (1925), 42 R. P. C. 225.

635. *Add. Annotation :*—**Mentd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

642. *Add. Annotations :*—**Mentd.** Edwards *v.* Porter (1924), 41 T. L. R. 57; Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

652. *Add. Annotation :*—**Mentd.** Bisset *v.* Wilkinson (1926), 42 T. L. R. 727.

660. *Add. Annotations :*—**Mentd.** Edwards *v.* Porter (1924), 41 T. L. R. 57; Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

663. *Add. Annotation :*—**Mentd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

666. *Add. Annotation :*—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

703. *Add. Annotation :*—**Mentd.** Aylott *v.* West Ham Corpn., Sisson *v.* West Ham Corpn. (1926), 90 J. P. 99.

738. *Add. Annotation :*—**Reld.** The Saxicava, [1924] P. 131.

814. *Add. Annotation :*—*As to* (1) **Reld.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

814a. **Profit sharing deposit notes redeemable in four years—Company bound to redeem.]**—Pltf., in reliance upon a prospectus issued in Sept., 1920, by deft. co., hereinafter called "the Trust," applied for & had allotted to him subject to the terms of the prospectus four £100 7½ per cent. profit sharing deposit notes of the Trust. It was stated in the prospectus that the notes would be paid off at 105 per cent. by four annual drawings, &, under the heading "Earlier payments," that the Trust retained the right to pay off at 105 per cent. all or any of the outstanding notes at any time on giving three months' previous notice in writing, but that in the event of the sale of the Trusts' R. B. estates, further referred to in that prospectus, which according to the construction placed upon the prospectus by the ct. was not confined to a sale under a certain option of purchase referred to later in the prospectus, but included a sale to anybody whomsoever, the Trust would set aside out of the proceeds of sale a sum sufficient to redeem all the notes then outstanding, & the holders would be

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PART III. SECT. 7, SUB-SECT. 6.—B.

400 l. *Misrepresentation by promoter—Not ground for rescission.]*—Subscribers to the memorandum of assocn. of a co. cannot repudiate shares for which they have subscribed either on the ground that they were induced to join the co. by fraud or misrepresentation, or on the ground that the truth of the precedent representations made by the promoters of the co. was a condition of the contract; the true remedy of the persons so defrauded is to sue for damages the persons so defrauding them.—PETROTITE & CHALLENGE HEATERS, LTD. *v.* BODLEY, [1924] N. Z. L. R. 103.—N.Z.

PART III. SECT. 8, SUB-SECT. 1.

1 l. **— —.]**—An advertisement offering the public shares in a co. for sale is a "prospectus" under sect. 2 (14) of Indian Cos. Act (VII. of 1913).—PRAMATHA NATH SANYAL *v.* KALI KUMAR DUTT (1924), I. L. R. 52 Calc. 449.—IND.

PART III. SECT. 8, SUB-SECT. 2.—D. (a).

aa. *Under Criminal Code, s. 414.]*—The above sect. relates to the issuing of a written prospectus, statement or account by a director with the intention of deceiving shareholders of a co., or of inducing some other person to entrust or advance property to the co.; & where deft. obtained subscriptions for stock of a co., of which he was a promoter, upon false oral statements :—*Held:* a conviction under that sect. was not justified.—R. *v.* ANDERSON (1924), 55 O. L. R. 586.—CAN.

given an option of being then paid off in cash at 105 per cent. or of retaining their notes till the date of drawing. Each of the notes, which was in the form of the specimen note referred to in the prospectus, provided that the Trust would, as & when the principal sum of £100 became payable in accordance with the conditions indorsed thereon, pay to pltf. the sum of £105, & was expressed to be subject to & with the benefit of those conditions, which repeated the provisions contained in the prospectus for the redemption of the notes by drawings & the option retained by the Trust to pay off the notes on notice, but did not refer to the promise by the Trust contained in the prospectus as to earlier payments in the event of the sale of the Trust's R. B. estates. The option to purchase referred to in the prospectus having lapsed & the Trust having contracted to sell the R. B. estates without having given notice to pltf. that his option to be paid off or to retain his notes had thereby become exercisable, & the Trust having repudiated their liability to perform their promise contained in the prospectus, pltf. brought an action to have the said liability of the Trust established & for an injunction to restrain them from dealing with the proceeds of sale without in the first place setting aside a sum sufficient to pay off the outstanding notes:—*Held*: pltf. was entitled to the relief claimed on either of two grounds, namely, (1) that the entire contract was contained in two written instruments, namely, the deposit notes & the prospectus, the terms of which the ct. could reconcile by construing the promise in the prospectus as if it were inserted in the note as a proviso to come into operation, if & when the R. B. estates were sold, or (2) that the promise was a binding collateral contract, the consideration for which was the contract by pltf. to take up the notes, & that, as the terms of that promise & an *animus contrahendi* on the part of pltf. & the Trust had been clearly proved, the test laid down by LORD MOULTON in *Heilbut, Symons & Co. v. Buckleton* (*see* No. 1565) was satisfied—JACOBS v. BATAVIA & GENERAL PLANTATIONS TRUST, [1924] 2 Ch. 329; 93 L. J. Ch. 520; 131 L. T. 617; 40 T. L. R. 616; 68 Sol. Jo. 630, C. A.

818. *Add. Annotation*:—**Reld.** Jubilee Cotton Mills Official Receiver & Liquidator *v.* Lewis, [1924] A. C. 958.

820. *Add. Annotations*:—*As to* (5) **Consd.** Atherton *v.* British Insulated & Helsby Cables, [1925] 1 K. B. 421. *Generally*, **Reld.** Stapley *v.* Read (1924), 131 L. T. 629.

825. *Add. Annotation*:—**Mentd.** Eastwood & Holt *v.* Studer (1926), 31 Com. Cas. 251.

830a. —— —— **Company in voluntary liquidation.**]—A reduction, reorganisation & increase of capital with a view to continuing to carry on the business of a co. can be directed by the ct., while the co. is in voluntary liquidation, & all further proceedings in a voluntary winding up stayed.—*Re* WALTERS (STEPHEN) & SONS, LTD. (1926), 70 Sol. Jo. 953.

1015. *Add. Annotation*:—**Reld.** *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1017. *Add. Annotations*:—**Reld.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718; *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1018. *Add. Annotations*:—**Mentd.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718; *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1019a. **Passing of special resolution—& confirmation by court.**]—(1) The proper form of minute in petitions for reduction of capital is not as set out in *Re Salinas of Mexico*, [1910] W. N. 311, but should state that the capital has been reduced "by a special resolution confirmed by an order of the High Ct. of Justice." (2) With regard to the form of notice of registration pursuant to 1908 Act, s. 51 (3), it is a sufficient compliance with the statute to give such notice in the short form approved in *Re Oceana Development Co.* (1912), 56 Sol. Jo. 537, which removed the objection to the length of the minute.—*Re* NORTH POLE ICE CO., LTD. & REDUCED, [1924] W. N. 131.

Annotation:—*As to* (1) **Expld.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718.

1019b. —— ——.]—Where a petition for reduction of capital does not involve & is not followed by any sub-division, consolidation or reorganisation of share capital, the old form of minute used in cases of simple reduction is correct, & it is not necessary to state that the capital has been reduced by virtue of a special resolution, & with the sanction of an order of the High Ct. of Justice.—*Re* DAMPNEY & CO., LTD. & REDUCED (1924), 68 Sol. Jo. 718.

1029. *Add. Annotation*:—**Reld.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

1036. *Add Annotation*:—**Reld.** *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1036a. —— ——.]—*Re* NORTH POLE ICE CO., LTD., & REDUCED, No. 1019a, *ante*.

1080a. —— **Company in voluntary liquidation.**]—*Re* WALTERS (STEPHEN) & SONS, LTD., No. 839a, *ante*.

1107. *Add. Annotation*:—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

1108. *Add. Annotation*:—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1114. *Add. Annotation*:—**Mentd.** Stapley *v.* Read (1924), 131 L. T. 629.

1124. *Add. Annotations*:—**Consd.** I. R. Comrs. *v.* Doncaster (1924), 93 L. J. K. B. 838; *Re* Speir, Holt *v.* Speir, [1924] 1 Ch. 359; I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395. **Foll.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982; *Re* Taylor, Waters *v.* Taylor, [1926] Ch. 923. **Reld.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

1205. *Add. Annotation :*—**Distd.** Pailin *v.* Northern Employers' Mutual Indemnity Co., [1925] 2 K. B. 73.

1220. *Add. Annotation :* **Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

1226. *Add. Annotation :—As to* (2) **Expld.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

1226a. - -.] — AGRICULTURAL WHOLESALE SOCIETY *v.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY, No. 431a, *ante*.

1230. *Add. Annotation :-* **Reld.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

1265. *Add. Annotation :*—**Reld.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 447.

1411a. - - - **Where further investigation required.**] —On an application under 1908 Act, s. 32, by summons or motion, for the rectification of the register, if there is some question in dispute requiring investigation the practice is for the judge not to make an order for rectification but to make an order dismissing the summons on motion & leaving it open to appct. to bring an action.—*Re* GREATER BRITAIN PRODUCTS DEVELOPMENT CORPN., LTD. (1924), 40 T. L. R. 488, D. C.

1446. *Add. Annotation :* - - **Mentd.** *Re* Neville, Neville *v.* First Garden City, [1925] Ch. 44.

1448a. **Conversion of preference shares into ordinary shares - Whether alteration in status of shareholders.**]—Where preference shareholders had the right to give six months' notice converting their shares into ordinary shares, & some of them gave such notice less than six months before the co. went into voluntary liquidation :—*Held :* such notice was valid & effectual to convert their preference shares into ordinary shares, & did not create an alteration of their status after the commencement of the winding up within 1908 Act, s. 205. *Re* BLAINA COLLIERY CO., LTD. (1926), 70 Sol. Jo. 101.

1472. *Add. Annotation :*—**Reld.** Leeds Industrial Co-operative Soc. *v.* Slack, [1924] A. C. 851.

1480. *Add. Annotation :—Generally,* **Reld.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

1565. *Add. Annotation :*—**Mentd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

1589a. —— **Statement by agent—That application purely formal.**]—E., acting as agent of pltf. co., represented to deft. that the co. owned valuable rights over certain mines in China, & deft. agreed to go to China & investigate & make a report upon the properties, & he signed an application form for 2,000 £1 shares upon a representation by E. that the application was purely formal, & deft. paid £250 on allotment upon a representation by E. that the payment was for an option on 250 shares to be bought by deft., if he so desired, on his return from China. The shares were allotted to deft. at a meeting at which E. was in the chair, but no notice of the allotment was sent to deft. Deft. went to China & pltf. co. alleged that he returned to England without obtaining any information. Deft. on the other hand, alleged that E.'s representations were false & that the mining rights were valueless. In an action in which pltf. co. in liquidation claimed (*inter alia*) £1,750 for unpaid calls on the shares, the trial judge held that as deft. intended only to take an option on the shares & had never contracted to take them the action failed :—*Held :* although E. was an agent of pltf. co. to come to an agreement with deft., yet by reason of E.'s fraudulent use of the application form signed by deft. the latter could not be treated as having agreed to take the shares, & the decision of the trial judge must be affirmed.—HUMPHREY & DENMAN, LTD. (IN LIQUIDATION) *v.* KAVANAGH (1925), 41 T. L. R. 378, C. A.

1746. *Add. Annotation :-* **Reld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

PART III. SECT. 17. SUB-SECT. 1. B. (a) i.

s i. - - - - - - - - .] Where the evidence was not conclusive : *Held :* in the circumstances A.'s agreement for employment stood by itself, & his status as a shareholder, which was established by what he had done & omitted to do, was not affected. *Re* BUFF PRESSED BRICK CO. (1924), 56 O. L. R. 33.—**CAN.**

s i. - - - - *Balance to be paid on commencement of undertaking by company.*] —A. added on the foot of an application for shares the words : "This subscription is given on the understanding that I am to be called upon for the balance of the money when building operations commence" : —*Held :* this stipulation had nothing to do with his becoming a shareholder ; & failure of the co. to commence building did not entitle A. to rescind his contract.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

t i. - - - - - - - - - - - - .] —A. relied, as entitling him to rescission, upon the non-fulfilment of a condition that a building should be erected on a certain site :—*Held :* his agreement constituted A. a shareholder *in praesenti*, & the condition should be treated merely as a collateral obligation on the part of the co.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—E

d i. —— *Not after election to retain shares.*] MCDONALD *v.* WAIRAKEI, LTD., [1924] N. Z. L. R. 201.—**N.Z.**

PART III. SECT. 17, SUB-SECT. 1.—C. (a).

1553 vi. - - - .]—MILNE *v.* DURHAM HOSIERY MILLS, LTD., [1925] 3 D. L. R. 720, 57 O. L. R. 228.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (b).

se. *Representation must have induced contract.*]—MARITIME UNITED FARMERS CO-OPERATIVE, LTD. *v.* DICKIE, [1925] 1 D. L. R. 377 ; 32 N. B. R. 43.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (c).

1568 ii. - - - - - - - .]—Deft., director of a co., without putting his signature to any written document, made fraudulent misrepresentations as to the financial position of the co., whereby pltf. was induced to apply & pay for shares :—*Held :* Lord Tenterden's Act had no application to the case, & pltf. was entitled to recover from deft. the amount paid for the shares.—DIAMANTI *v.* MARTELLI, [1923] N. Z. L. R. 663.—**N.Z.**

f. Read now "1568 i."

g. Read now "1568 ii."

1568 iii. —— ——.]—PETROTITE & CHALLENGE HEATERS, LTD. *v.* BODLEY, No. 400 i., *ante*.—**N.Z.**

PART III. SECT. 17, SUB-SECT. 1.—G. (d).

r i. - - - - .]—TRUSTS & GUARANTEE CO. *v.* SMITH, [1924] 2 D. L. R. 211 ; 54 O. L. R. 144 ; 4 C. B. R. 195.—**CAN.**

r ii. - - - - .]—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

PART III. SECT. 17, SUB-SECT. 2.—B. (a).

t i. - - - - .]—Where a contract to purchase shares was entered into by one of two partners of a trading firm, without authority express or implied, & owing to a clerical error the firm was not entered on the register of members & the name of the other partner alone was entered :—*Held :* the latter was never under any liability to the co. & could not be made a contributory.—MASSCAR *v.* MCKENZIE & SON, [1924] 2 D. L. R. 1242 ; 2 W.W. R. 521.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—C. (a).

ad. *Application before compliance with Sale of Shares Act—Allotment after compliance with Act.*]—Before a co. had obtained the certificate required by Sale of Shares Act, & before its agent for the sale of shares had been licensed thereunder, an agent thereof obtained an application for shares. The shares were allotted after the certificate & licence were issued, & the shareholder

1814a. "Initial share issue"—Meaning.]—GAS METER CO., LTD. *v.* DIAPHRAGM & GENERAL LEATHER CO., LTD. (1925), 41 T. L. R. 342.

1817. *Add. Annotation:*—*Generally.* **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

1821. *Add. Annotation:*—*As to* (1) **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 709.

1851. *Add. Annotation:* **Mentd.** Bruce *v.* Railway Clearing House (1925), 133 L. T. 514.

1923. *Add. Annotation:* **Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 13.

1964. *Add. Annotation:* **Mentd.** R. *v.* Lancashire JJ., *Ex p.* Tyrer, [1925] 1 K. B. 200.

2026. After this case add the following new sub-section:—

SUB-SECT. 3a.—UNDER COMPANIES (CONSOLIDATION) ACT, 1908, s. 88.

See case *infra.*

2060. *Add. Annotation:* **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 150.

2070. *Add. Annotation:*—**Overd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2070a. ——.]—Where the owner of shares in a co. sells them there arises out of the contract of sale an implied promise by the purchaser to indemnify his vendor against all calls that may be made upon him in respect of the shares at any future date, whether made while the purchaser remains entitled to the shares or after he has parted with them to a sub-purchaser; & it makes no difference in that respect that the transfer which the vendor delivers to the purchaser in completion of his contract is executed in blank.—SPENCER *v.* ASHWORTH PARTINGTON & Co., [1925] 1 K. B. 589; 94 L. J. K. B. 117; 132 L. T. 753, C. A.

2072. *Add. Annotation:*—**Refd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2087a. Sale by transferee to sub-purchaser.]—SPENCER *v.* ASHWORTH PARTINGTON & Co., No. 2070a, *ante.*

2100. *Add. Annotation:* *As to* (1) **Consd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2169. *Add. Annotation:*—**Mentd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

2174. *Add. Annotation:* **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2178. *Add. Annotation:* **Mentd.** Hall *v.* I. R. Comrs. (1926), 135 L. T. 759.

2179. *Add. Annotation:*—*As to* (1) **Refd.** Bank of N. T. Butterfield *v.* Golinsky, [1926] A. C. 733.

2217. *Add. Annotation:* **Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2228. *Add. Annotation:* **Refd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 417.

2343a. ——.]—SPENCER *v.* ASHWORTH PARTINGTON & Co., No. 2070a, *ante.*

2344. *Add. Annotation:* **Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2389. For the paragraph in the original volume substitute the following paragraph:—

Board equally divided.] Under an art. equivalent to Table A, art. 22, the extrix. of a deceased member of a co. had the right to be registered as a member, subject to the directors' absolute discretionary right to decline such registration. At a board meeting of the two directors to consider the extrix.'s application for registration, one director proposed & the other opposed registration. The board being equally divided, & there being no casting vote, the proposal was not carried, & the secretary was instructed to write to the extrix.'s solrs, accordingly & to return all the documents, namely, a transfer by the extrix. to herself.

paid several sums on the notes given for the shares & appointed proxies at different times to vote. The shareholder did not know until after a winding-up order had been made that the Act had not been complied with at the time of his application: *Held:* he was not entitled to have his name removed from the list of contributories.—*Re* GREAT NORTH INSURANCE CO., PAINTER'S CASE, [1925] 2 D. L. R. 778; [1925] 1 W. W. R. 1119; 21 Alta L. R. 326; *revsg.*, [1925] 1 W. W. R. 752.—CAN.

PART III. SECT. 17, SUB-SECT. 3.—D. (a).

af. *Allotment on terms other than those in application.*]—Where an allotment of shares was made on terms differing substantially from those contained in the application:—*Held:* as the allottee so far from accepting the allotment virtually repudiated it, he could not be held liable on the ground that the shares were duly allotted to him.—WHITTLE *v.* HENLEY, [1924] App. D. 135.—S. AF.

ag. *Allotment fraud on company—Company not bound to repudiate.*] *Re* SUN RAY MANUFACTURING CO., *Ex p.* BIRKETT & SONS, LTD., (1925) 1 D. L. R. 1201; 5 C. B. R. 286; *affg.*, [1924] 2 D. L. R. 1055; 4 C. B. R. 615.—CAN.

PART III. SECT. 17, SUB-SECT. 3.—E. (d).

1737 i. *Receipt by allottee immaterial—Posting sufficient.*]—HOWSON *v.* CROW (ONT.), [1925] 1 D. L. R. 495.—CAN.

PART III. SECT. 20, SUB-SECT. 1. A.

ii. —*Issue for future services to be rendered.*] Defts. promtd the incorporation of plff. co., & made an agreement with the original directors, who were merely the nominees of defts., that, as consideration for services which they promised to perform, defts. should receive practically the whole of the common shares of the capital stock of plff. co. as fully paid shares. *Held:* the transaction was *ultra vires* of plff. co.—TORONTO FINANCE CORPN. & COOK *v.* BANKING SERVICE CORPN. (1925), 57 O. L. R. 514.—CAN.

PART III. SECT. 20, SUB-SECT. 2.—C. (b) ii.

1856 i. *Issue to director—For services rendered—On resolution of shareholders—Application of surplus assets.*]—Where there was a surplus available for distribution by way of dividend among shareholders, & it was open to the shareholders if unanimous to deal with it as they might think fit:—*Held:* no creditor could object, & every shareholder would necessarily be estopped by his own conduct.—*Re* DOMESWANIA, LTD., [1924] 3 D. L. R. 116; 55 O. L. R. 413.—CAN.

PART III. SECT. 20, SUB-SECT. 3a.

ak. *Filing of contract—Time for filing—Extension of time.*]—Where the failure to comply with 1908 Act, s. 88, was due to inadvertence & when the irregularity was discovered the contract was reduced to writing but more than three years after the proper date for filing, & the co. presented a petition for extension of time:—*Held:* merely to grant relief from the prescribed penalty would be an insufficient remedy, & the time for filing was extended.—*Re* ANDERSON & MUNRO, LTD., [1924] S. C. 222.—SCOT.

PART III. SECT. 23, SUB-SECT. 2.—C. (a).

ai. —*On failure of transferee to take up shares.*]—*Re* COMPANIES ACT, *Re* BRITISH PETROLEUMS, LTD. (B.C.), [1925] 1 W. W. R. 246.—CAN.

PART III. SECT. 23, SUB-SECT. 3.—D. (b).

2331 ii. [illegible] ABDUL VAHAB, DR., *v.* HASANALLI ATHMAL, ETC., (1925), 1 I. L. R. 50 Bom. 220.—IND.

PART III. SECT. 23, SUB-SECT. 5.—B. (a).

bl. —.] A provision in the charter of a co. incorporated under Ontario Com. Act, that "the shares of the co. shall not be transferred without the consent of the board of directors" is valid.—*Re* PHILLIPS & LA PALOMA SWEETS, LTD. (1924), 56 D. L. R. 577; 51 O. L. R. 125.—CAN.

PART III. SECT. 23, SUB-SECT. 5.—B. (b) ii.

2373 ii. —.] *Re* PHILLIPS & LA PALOMA SWEETS, LTD. (1924), 56 D. L. R. 577; 51 O. L. R. 125.—CAN.

certificates & registration fee:—*Held:* the board's right of declining registration required to be actively exercised by a vote of the board *ad hoc*, & the mere failure to pass the proposed resolution for registration was not a formal active exercise of the right to decline; the extrix.'s absolute right to registration therefore remained intact, & the register must be rectified accordingly.—*Re* HACKNEY PAVILION, LTD., [1924] 1 Ch. 276; 93 L. J. Ch. 193; 130 L. T. 658.

2463. *Add. Annotation:*—**Reld.** I. R. Comrs. *v.* Allan (1925), 9 Tax Cas. 234.

2523. *Add. Annotation:*—**Distd.** *Re* Park Ward, [1926] Ch. 828.

2578. *Add. Annotation:*—**Reld.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2580. *Add. Annotation:* **Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2593. *Add. Annotation:* **Mentd.** Public Trustee *v.* Elder, [1926] Ch. 776.

2637. *Add. Annotation:*—**Reld.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2646. *Add. Annotation:*—**Reld.** Ellis Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2662. *Add. Annotation:*—*Generally*, **Mentd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2669. *Add. Annotation:*—**Reld.** Ellis Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2690. *Add. Annotation:*—*Generally*, **Mentd.** Ellis Trustee *v.* Dixon-Johnson (1924), 131 L. T. 652.

2703a. —**No lien conferred by articles of association.**]—Bye-laws of applt. bank, made under its Act of incorporation, provided: (44.) "the directors may decline to register any transfer of a share made by a shareholder who is indebted to the bank"; (57.) "the directors may deduct from the dividends payable to any shareholder all sums of money due by him to the bank on account of calls or otherwise." In Nov. 1924, the registered holder of two shares assigned them in writing to resp. as security for money due; he executed no transfer but deposited the share certificate with resp. In May 1925, the bank, which had no notice of the assignment, obtained judgment against the shareholder for money due from him, & seized the shares in execution. There was no evidence that the shareholder's liability to the bank existed at the date of the assignment:—*Held:* the bye-laws gave the bank no lien on the shares for the debt to them, & resp. was entitled under the assignment to a charge in priority to the bank's rights under the execution.—BANK OF N. T. BUTTERFIELD & SON, LTD. *v.* GOLINSKY, [1926] A. C. 733; 95 L. J. P. C. 162; 135 L. T. 584, P. C.

2793. *Add. Annotation:*—**Reld.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2799. *Add. Annotation:*—**Reld.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2850. *Add Citation:*—13 Mans. 316.

2854. *Add. Annotation:*—**Reld.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

2879a. ——— ———.]—(1) A private co. was governed partly by special arts. & partly by Table A. Table A, art. 70, fixed the qualification of a director as "the holding of at least one share." Special art. 20 empowered the directors to appoint any other "qualified person" either to fill a casual vacancy or as an addition to the board. At a full board meeting on Saturday, Nov. 14, transfers of shares to two outsiders were duly passed for registration, after which the transferees were forthwith elected directors. The transfers were registered on the following Monday:—*Held:* though before their appointment the transferees had acquired an absolute right to registration, they were not "qualified persons" before actual registration, & their appointment as directors was invalid.

(2) A director was due to retire by rotation at the annual general meeting on Wednesday, Nov. 11, & part of the business of which notice was given was the election of a director in his place. The retiring director's re-election was moved at the meeting, but the matter, though discussed, was not finally dealt with, & the meeting was adjourned successively to Thursday, Nov. 12, Saturday, Nov. 14, & Tuesday, Nov. 17. At the last adjournment the original motion for the retiring director's re-election was put & lost, & another shareholder was proposed & elected in his place:—*Held:* as the adjourned meeting was merely a continuation of the original meeting at which the question of the retiring director's re-election or replacement was considered, the proceedings were in order, & Table A, art. 82, had no application. (3) *Semble:* Table A, art. 82, only applies to a case where the retirement of a director by rotation & the necessity for his re-election or replacement is entirely lost sight of at the annual meeting.—SPENCER *v.* KENNEDY, [1926] Ch. 125; 95 L. J. Ch. 240; 134 L. T. 591.

2895a. Transfers of shares passed before election—Transfers not registered until after election.]—SPENCER *v.* KENNEDY, No. 2879a, *ante*.

2922. *Add. Annotation:*—**Reld.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

2944. *Add. Annotation:*—**Reld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

PART III. SECT. 23, SUB-SECT. 12.—A.

2455 i. *Loss of right to impeach—Transfer acted on by parties & company.*]—WAIRAKEI, LTD. *v.* CLARK, [1925] N. Z. L. R. 624.—N.Z.

PART III. SECT. 24, SUB-SECT. 5.

2468 i. *Whether gift complete.*]—Gifts of shares:—*Held:* not complete until at least the transfers were handed to the respective transferees.—COMMISSIONER OF STAMPS *v.* TODD, [1924] N. Z. L. R. 345.—N.Z.

PART III. SECT. 27, SUB-SECT. 5.—A.

m i. ——— *Plea of limitation.*]—HABIB ROUJI *v.* STANDARD ALUMINIUM & BRASS WORKS, LTD. (1925), I. L. R. 49 Bom. 715.—IND.

PART III. SECT. 28, SUB-SECT. 1.—D.

e. Add "*varied*, 38 O. L. R. 414; 33 D. L. R. 487."

PART III. SECT. 28, SUB-SECT. 2.—A.

e. Add "*varied*, 9 A. R. 630."

PART III. SECT. 28, SUB-SECT. 2.—B. (a).

e i. *Services requiring expert & technical knowledge.*]—Where the services of a director did not fall within the scope of the ordinary unpaid duties of director, but were of a highly technical character, & the proper conduct of the business required expert & technical knowledge which it was not easy to obtain:—*Held:* he was entitled to a reasonable remuneration for such services.—DUMOUT *v.* HOUDE-MINER FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—CAN.

3005. *Add. Annotation :—Generally*, **Mentd.** Performing Right Soc. *v.* Mitchell & Booker (Palais De Danse), [1924] 1 K. B. 762.

3037. *Add. Annotation :*—**Mentd.** Leeds Industrial Co-operative Soc. *v.* Slack, [1924] A. C. 851.

3044. *Add. Annotations :*—**Mentd.** I. R. Comrs. *v.* Cornish Mutual Assce. (1924), 41 T. L. R. 70; South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476; *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 680.

3059. *Add. Annotation :*— **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3059a. —— ——.]—(1) The manner in which the work of a co. is to be distributed between the board of directors & the staff is a business matter to be decided on business lines. The larger the business carried on by the co. the more numerous & the more important the matters that must of necessity be left to the managers, the accountants, & the rest of the staff.

(2) In ascertaining the duties of a director of a co., it is necessary to consider the nature of the co.'s business & the manner in which the work of the co. is, reasonably in the circumstances & consistently with the arts. of assocn., distributed between the directors & the other officials of the co.

(3) In discharging those duties, a director (*a*) must act honestly, & (*b*) must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. But, (*c*) he need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge & experience; in other words, he is not liable for more errors of judgment; (*d*) he is not bound to give continuous attention to the affairs of his co.; his duties are of an intermittent nature to be performed at periodical board meetings, & at meetings of any committee to which he is appointed, & though not bound to attend all such meetings he ought to attend them when reasonably able to do so; & (*e*) in respect of all duties which, having regard to the exigencies of business & the arts. of assocn., may properly be left to some other official, he is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.

(4) A director who signs a cheque that appears to be drawn for a legitimate purpose is not responsible for seeing that the money is in fact required for that purpose, or that it is subsequently applied for that purpose, assuming, of course, that the cheque comes before him for signature in the regular way, having regard to the usual practice of the co. A director must of necessity trust to the officials of the co. to perform properly & honestly the duties allocated to them.

Before any director signs a cheque, or parts with a cheque signed by him, he should satisfy himself that a resolution has been passed by the board, or committee of the board, as the case may be, authorising the signature of the cheque; & where a cheque has to be signed between meetings, he should obtain the confirmation of the board subsequently to his signature.

The authority given by the board or committee should not be for the signing of numerous cheques to an aggregate amount, but a proper list of the individual cheques, mentioning the payee & the amount of each, should be read out at the board or committee meeting & subsequently transcribed into the minutes of the meeting.

(5) It is the duty of each director to see that the co.'s moneys are from time to time in a proper state of investment, except so far as the arts. of assocn. may justify him in delegating that duty to others.

(6) Before presenting their annual report & balance sheet to their shareholders, & before recommending a dividend, directors should have a complete & detailed list of the co.'s assets & investments prepared for their own use & information, & ought not to be satisfied as to the value of their co.'s assets merely by the assurance of their chairman, however apparently distinguished & honourable, nor with the expression of the belief of their auditors, however competent & trustworthy.

(7) It is not the duty of a director of a big insurance co. to supervise personally the safe custody of the securities of the co. It would be impracticable, on every purchase of securities, for actual delivery thereof to be made to the directors, or, on every sale, for the delivery to the brokers of the securities sold to await a meeting of the board or of a committee of directors. The duty of seeing that the securities are in safe custody must of necessity be left to some official of the co. in daily attendance at the office of the co., such as the manager, accountant, or secretary.

(8) A co.'s stockbrokers, however respectable & responsible they may be, are not proper persons to have the custody of its securities except on such occasions when, for short periods, securities must of necessity be left with them; but immediately such necessity ceases the securities should be lodged in the co.'s strong room or with its bank, or placed in other proper & usual safe keeping.

(9) A director is not responsible for declaring a dividend unwisely. He is liable if he pays it out of capital, but the *onus* of proving that he has done so lies upon the liquidator who alleges it.

Art. 150 of the co.'s arts. of assocn. provided (*inter alia*) that none of the directors, auditors, secretary or other officers for the time being of the co. should be answerable for any loss, misfortune, or damage which might happen in the execution of their respective offices or trusts, or in relation thereto, unless the same should happen by or through their own wilful neglect or default respectively :—*Held :* (10) an act, or an omission to do an act, is wilful where the person who acts, or omits to act, knows what he is doing & intends to do what he is doing, but if that act or omission amounts

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PART III. SECT. 28, SUB-SECT. 3.—C.

3019 l. Add "*varied*, [1902] A. C. 33."

PART III. SECT. 28, SUB-SECT. 4.—A.

3020 l. *Right to act as director—Right to injunction.*]—An injunction may be granted on the application of a director restraining plff.'s co-directors from wrongfully excluding him from acting as a director.—BARAT CHANDRA CHAKRAVARTI *v.* TARAK CHANDRA CHATTERJEE (1924), I. L. R. 51 Calc. 916.—IND.

PART III. SECT. 28, SUB-SECT. 4.—C.

3. Add "*varied*, 38 O. L. R. 414; 33 D. L. R. 487."

to a breach of that person's duty, & therefore to negligence, he is not guilty of wilful neglect or default unless he knows that he is committing, & intends to commit, a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of his duty; (11) the *immunity afforded by art. 150* was one of the terms upon which the directors held office in the co., & availed them as much on a misfeasance summons by the Official Receiver under 1908 Act, s. 215, as it would have done in an action by the co. against them for negligence; (12) upon the evidence & in accordance with the principles enunciated above, none of the resp. directors, other than the managing director, was liable.

(13) The measure of the auditor's responsibility depends upon the terms of his engagement. There may be a special contract defining the duties & liabilities of the auditors. If there is, then that contract governs the question. The arts. will, however, be looked at if there is no special agreement, because the auditors will presumably have taken their duties upon the terms, among others, set out in the arts. That is not to say that auditors can set aside a statutory obligation. No agreement or art. of assocn. can remove an imperative or statutory duty.

(14) Sect. 113 does not lay down a rigid code. The duty imposed on the auditors by it is not absolute, but depends upon the information given & explanations furnished to them, so that there is abundant scope for discretion. Art. 150 is not in conflict with the sect. The *onus* lies upon the auditors, who would not be excused for total omission to comply with any of the requirements of the sect., or for any consequences of deliberate or reckless indifferent failure to ask for information on matters which call for further explanation.

(15) An auditor is not justified in omitting to make personal inspection of securities that are in the custody of a person or co. with whom it is not proper that they should be left, whenever such personal inspection is practicable.

(16) When an auditor discovers that securities of the co. are not in proper custody, it is his duty to require that the matter be put right at once, or, if his requirement is not complied with, to report the fact to the shareholders, & this whether he can or cannot make a personal inspection.

Auditors should not be content with a certificate that securities are in the possession of a particular co., firm, or person unless the co., etc., is trustworthy, or, as it is sometimes put, respectable, & further is one that in the ordinary course of business keeps securities for its customers. In all these cases the auditor must use his judgment.

Where the auditors did not personally inspect the securities of the co. in the hands of the stockbrokers of the co., & accepted from time to time the certificate of the brokers that they held large blocks of such securities, & did not either insist upon those securities being put in proper custody or report the matter to the shareholders:—*Held:* (17) they committed a breach of duty, but, inasmuch as throughout the audit the auditors honestly & carefully discharged what they conceived to be the whole of their duty to the co., such negligence was not wilful, & art. 150 applied to exonerate them from liability.

Where the auditors after a full investigation in which they were misled & deceived, & their reports to the board suppressed, by the chairman of the co., (*a*) described large sums of money left in the hands of the co.'s stockbrokers & lent to the general manager of the co. as "Loans at call or short notice," "Loans" or "Cash at hand & in bank"; (*b*) failed to discover that the co.'s stockbrokers, in order to reduce their indebtedness to the co. for the purposes of the audit, made purchases, on behalf of the co., immediately before the close of the co.'s financial year, of Treasury Bills which in fact never came into the possession of the co. & were sold immediately the new financial year had opened:—*Held:* (18) they were not guilty of any breach of duty as auditors.

(19) Sect. 215 is a procedure sect. only & creates no new or additional liability.—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., [1925] 1 Ch. 407; 94 L. J. Ch. 445; 133 L. T. 520; 40 T. L. R. 853; [1925] B. & C. R. 109, C. A.

Annotation:—As to (10) **Distd.** *Re* City of London Insce. (1925), 41 T. L. R. 521.

3060a. —— - —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3062. *Add. Annotation:* **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3063a. —— —— **Proper & honest performance of duties.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3063b. —— **Reliance on chairman—Accuracy of balance-sheet.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3066. *Add. Annotation:—Generally,* **Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3068. For "—— **Signature of cheques to company's prejudice**" read "—— **Signature of cheques—To company's prejudice.**"

3068a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3071. *Add. Annotation:*—**Reld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3109. *Add. Annotation:*—**Reld.** British Insulated & Helsby Cables v. Atherton, [1926] A. C. 205.

3109a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

PART III. SECT. 28, SUB-SECT. 4.—D.

3075 I. *Capacity to contract—General rule.*]—A director has a right to contract with the co. subject to certain qualifications involving cases of misrepresentation, bad faith or secret profits, & not where ordinary relation of employer & employee exist. The ordinary objections to such contracts do not apply where all the shareholders were directors, as no question can arise as to directors prejudicing the rights of the shareholders.—DUBOST v. HOME-MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—CAN.

PART III. SECT. 28, SUB-SECT. 5.—A.

3115 I. *Exercise of powers—Control by members.*]—The directors of a co. constitute its governing & managing body, & except to the extent that their powers are expressly restricted by statute or the arts. of assocn. or otherwise, they possess authority to exercise all the powers of the co., subject to the control of the shareholders.—MID-WEST COLLIERIES, LTD. v. McEWEN, [1925] 2 D. L. R. 529.—CAN.

3127a. —— Delegation of duty.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3128a. Safe custody of company's securities—Delegation of duty—Securities with company's stockbrokers.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3142. *Add. Annotation:*—*Generally*, **Mentd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3160a. ——.]—A co. is bound in a matter *intra vires* the co. by the unanimous agreement of all its corporators.

If all the individual corporators in fact assent to a transaction that is *intra vires* the co., though *ultra vires* the board, it is not necessary that they should hold a meeting in one room or one place to express that assent simultaneously.—PARKER & COOPER, LTD. *v.* READING, [1926] Ch. 975.

3181. *Add. Annotation:*—**Mentd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

3216. *Add. Annotation:* **Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3240. *Add. Annotation:* **Mentd.** Wright *v.* Morgan, [1926] A. C. 788.

3261. *Add. Annotation:*—*Generally*, **Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3280. *Add. Annotation:*—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3280a. —— Directors relying on chairman's assurance as to value of assets.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3282a. Dividends paid out of capital.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3285. *Add. Annotation:* As to (2) **Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3291. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3327. *Add. Annotation:*—**Distd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33.

3327a. —— ——.]—The directors of a co. cannot be made liable for an infringement of a patent by the co. merely by reason of their position as directors, even in a case where they are the sole directors & shareholders of the infringing co.—BRITISH THOMSON-HOUSTON CO. *v.* STERLING ACCESSORIES, LTD., BRITISH THOMSON-HOUSTON CO. *v.* CROWTHER & OSBORN, LTD., [1924] 2 Ch. 33; 93 L. J. Ch. 335; 131 L. T. 535; 40 T. L. R. 544; 68 Sol. Jo. 595; 41 R. P. C. 311.

Annotation:—**Apld.** Prichard & Constance *v.* Amata (1924), 42 R. P. C. 63.

3327b. —— ——.]—Deft. co., incorporated in 1924 for the purpose of carrying on business as manufacturers of toilet preparations & publishers of medical books & publications relating thereto, on letter paper described themselves as "wholesale manufacturers of Amata Toilet Preparations." Pltf. co., who had for many years distinguished their goods by the word "Amami," & in July, 1900, had registered that word as a trade mark to be applied to perfumery, etc., commenced an action against deft. co. & the two only directors thereof who were signatories of their memorandum of assocn. for an injunction:—*Held*: there was no evidence that deft. co. had been formed by the other two defts. for the purpose of doing a wrongful act & no claim had been established by pltfs. against those defts. personally; & the action as against them must be dismissed with costs. PRICHARD & CONSTANCE (WHOLESALE), LTD. *v.* AMATA, LTD. (1924), 42 R. P. C. 63.

3405. *Add. Annotation:* **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

3423. *Add. Annotation:* **Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3434. *Add. Annotation:* As to (5) **Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3455a. Re-election of retiring director Ad-

PART III. SECT. 28, SUB-SECT. 5.—C. (a).

a1. *Contract not authorised by all directors.*]—Where L., a director of deft. co., purporting to act on behalf of the co., agreed with pltf. to enter into a lease, & the directors neither authorised L. to enter into the agreement nor expressly ratified his action:—*Held*: the co. was not bound by the agreement. LEGG & CO. *v.* PREMIER TOBACCO CO., [1926] App. D. 132. **S. AF.**

PART III. SECT. 28, SUB-SECT. 5.—C. (e).

f. Add "*varied*, 9 A. R. 620."

PART III. SECT. 28, SUB-SECT. 6. C. (b).

am. *Commission.*]—Con. Act, 1908, s. 57, does not authorise the directors to make presents of the co.'s capital in the guise of commission. Such presents are *ultra vires* of the directors, & recoverable by the co.—WAIHAKEI, LTD. *v.* CREAVE, [1925] N. Z. L. R. 624. **N.Z.**

PART III. SECT. 28, SUB-SECT. 6.—D. (d) ii.

a l. —— *Extent of liability.*]—Deft., a director of pltf co., in that he had failed in his duty to hand over to the co. certain shares, was ordered to account to the co. for their value as at the date when he received them:—*Held*: such value was not the intrinsic value at the specified date, but the value in money which pltf co. could reasonably have obtained on the market, & as pltf. co. had discharged the onus of proving that it could have obtained the market price, the value would be fixed at that amount.—ROBINSON *v.* RANDFONTEIN ESTATES GOLD MINING CO., LTD., [1924] App. D. 151.—**S. AF.**

PART III. SECT. 28, SUB-SECT. 6. E. (f).

g l. ——.]—The penalty enacted against directors of a co. who participate in the payment of a dividend where the co. is insolvent, & whereby they are made jointly & severally liable to creditors for debts of the co. then existing, is incurred only when they knew, or were bound to know, the insolvency of the co. at the time the dividend was declared.—SMITH *v.* HENDERSON, [1924] 1 D. L. R. 863; Q. R. 62 S. C. 270.—**CAN.**

an. *Dividend disposing of entire assets of company.*]—Judgment given against directors.—THOMAS *v.* GALE (B. C.), [1925] 3 D. L. R. 757.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—F. (g).

b (p. 509) **l.** —— ——.]—Pltfs. sued directors of a co., alleging that judgments recovered by them were for "wages due for services performed for the co." The evidence showed that pltfs. were hired to prospect for oil when so instructed, & they were not to do anything but hold themselves in readiness:—*Held*: the judgments were not for wages due for services performed, as they did no more than wait for the chance of performing them.—MULLEN *v.* MILLAR (1924), 55 O. L. R. 563.—**CAN.**

PART III. SECT. 28, SUB-SECT. 8. B.

a1. —— *And during term of appointment.*]—[ILLEGIBLE] (1924), [1925] 1 D. L. R. 319.—**CAN.**

PART III. SECT. 28, SUB-SECT. 9. C.

ao. *Remuneration voted by directors—Validity—Action by shareholder—Onus of proof.*]—Where a pltf. complains of directors voting a salary & travelling expenses to the managing director, he must show that their action was either *ultra vires* or of a fraudulent character, & although it is beyond the powers of directors to vote the salary & travelling expenses, this defect can be remedied at a shareholders' meeting where the managing director is a majority shareholder.—HOUSTON *v.* VICTORIA MACHINERY DEPOT, LTD., [1924] 2 D. L. R. 657; 55 N. S. R. 425.—**CAN.**

journment of meeting.]—SPENCER v. KENNEDY, No. 2879a, *ante*.

3492. *Add. Annotation :*—**Refd.** Shuttleworth v. Cox (Maidenhead) (1926), 43 T. L. R. 83.

3502. *Add. Annotations :*—**Consd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775. **Refd.** Kreditbank Cassel G. m. b. H. v. Schonkers, [1926] 2 K. B. 450.

3506. *Add. Annotation :*—*Generally*, **Refd.** Kreditbank Cassel G. m. b. H. v. Schenkers, [1926] 2 K. B. 450.

3506a. —— —— **Cheque — Presumption of authority.**]—STEWART (ALEXANDER) & SON, OF DUNDEE, LTD. v. WESTMINSTER BANK, LTD., [1926] W. N. 126.

3526. *Add. Annotation :*—*Generally*, **Refd.** I. R. Comrs. v. Fisher's Exors., [1926] A. C. 395.

3532. *Add. Annotation :*—**Refd.** Thomas v. Todd, [1926] 2 K. B. 511.

3555. *Add. Annotation :*—*Generally*, **Mentd.** Glanvill Enthoven v. I. R. Comrs. (1924), 131 L. T. 818.

3560. *Add. Annotations :*—**Consd.** Chibbett v. Robinson (1924), 132 L. T. 26. **Distd.** Mudd v. Collins (1925), 133 L. T. 186. **Mentd.** Reed v. Seymour (1926), 95 L. J. K. B. 796.

3565. *Add. Annotations :*—*As to* (1) **Refd.** Swedish Central Ry. v. Thompson, [1924] 2 K. B. 255. *As to* (2) **Refd.** Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd v. Goukassow (1924), 40 T. L. R. 837.

3573. *Add. Annotation :*—**Refd.** Jones v. Oceanic Steam Navigation Co., [1924] 2 K. B. 730.

3603a. —— —— **Bills of exchange drawn by branch manager.**]—The arts. of assocn. of a co. empowered the directors to determine who should be entitled to sign & make, draw, accept & indorse on the co.'s behalf bills, notes, receipts, acceptances, indorsements, cheques, etc. The co., whose business was that of forwarding agents, had a branch at Manchester under a branch manager, C. This branch manager, without having in fact received any authority from the co., & acting in fraud of the co., drew seven bills of exchange on behalf of the co. signed "S.C., Manchester manager." The bills were drawn to the order of the co., they were accepted by C. & W. & indorsed on behalf of the co. "S.C., Manchester manager." In an action on the bills by the holders in due course against the co. as drawers :—*Held :* (1) pltfs. were not entitled to act on bills drawn by a person in the position of the branch manager ; (2) the bills were forgeries under which pltfs. could have no title.—KREDITBANK CASSEL G. m. b. H. v. SCHENKERS (1927), 163 L. T. Jo. 91, C. A.

3613. *Add. Annotation :*—**Mentd.** Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc., [1925] Ch. 769.

3652. *Add. Annotation :*—**Refd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. v. The Co., [1926] Ch. 951.

3656. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3657. *Add. Annotation :*—**Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3661. *Add. Annotation :*—**Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3661a. ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3662a. **Inspection of securities—Whether in proper custody.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3664. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3665. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3668. *Add. Annotation :*—*As to* (1) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3670a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

PART III. SECT. 28, SUB-SECT. 9.—D.

ap. *Extent of powers.*]—Where a general manager is chosen from the directors & is therefore a managing director, there is an implication of further & larger authority than in the case of a general manager who is not a director : but when directors appoint a "managing director," they may be taken to have *ipso facto* delegated to him some of their powers as a board of directors.—MID-WEST COLLIERIES, LTD. v. MCEWEN, [1925] 2 D. L. R. 529.—CAN.

3501 v. —— —— ——.]—Persons dealing with a managing director need only satisfy themselves that he has the power to do what he does, even though it be for his personal advantage.—*Re* J. STANLEY WEDLOCK, LTD., *Ex p.* ROYAL BANK, [1924] 4 D. L. R. 1176 ; 5 C. B. R. 103.—CAN.

PART III. SECT. 28, SUB-SECT. 10.

r 1. —— *Effect of bye-law.*]—The president of a co. has no authority without the authorization by the board to engage solrs. in the co.'s business, though there be a bye-law giving him a general oversight over the business of the co.—*Re* PETERS MANUFACTURING CO., *Ex p.* HUNTER, [1924] 4 D. L. R. 1305 ; 4 C. B. R. 311.—CAN.

si. —— *Cheque—Unsatisfied judgment against company.*]—*Held :* the creditor, to whom the cheque was paid, was not prevented from proceeding against the president upon it.—WRIGHT v. RITCHIE, [1925] 4 D. L. R. 1050.—CAN.

PART III. SECT. 29, SUB-SECT. 1.—D.

gi. —— —— —— *Contracts for purchase of stock.*]—*Held :* the co., in order to avoid liability, must show that their officers were, to the knowledge of the brokers, abusing their powers & giving directions they had no power to give.—TICONDEROGA PULP & PAPER CO. v. COWANS, [1925] 4 D. L. R. 1.—CAN.

g ii. —— —— —— *Agreement for non-shareholders to gain advantages of shareholders.*]—*Held :* express authority necessary.—MCLEOD v. UNITED CANNERS, LTD. (P.E.I.), [1925] 3 D. L. R. 767.—CAN.

g iii. —— —— *Cancellation of subscription for stock.*]—*Held :* express authority necessary.—*Re* SUN RAY MANUFACTURING CO., *Ex p.* ROBSON (ONT.), [1925] 1 D. L. R. 175 ; 3 C. B. R. 303 ; *affg.* 4 C. B. R. 597.—CAN.

PART III. SECT. 28, SUB-SECT. 2.—C. (5).

g i. —— *By acts of secretary-treasurer.*]—*Held :* (1) a secretary-treasurer, as such, has no authority to bind his co. ; (2) on the facts, there was nothing to show that the authority of the secretary-treasurer in this case was other or more extensive than that of any other secretary.—MYERS v. UNION NATURAL GAS CO. (1923), 53 O. L. R. 36.—CAN.

PART III. SECT. 29, SUB-SECT. 3.—C.

g i. —— —— ——.]—Where the manager of a co., acting in good faith under the authority which he thought was vested in him & which could have vested in him under the co.'s arts. of assocn., executes a contract on the co.'s behalf, & the other party accepts him as having authority, the co. is bound by his act.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. v. BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871 ; [1925] 1 W. W. R. 505 ; 34 B. C. R. 533.—CAN.

PART III. SECT. 30, SUB-SECT. 2.—C. (b) ii.

sq. *Rights of members—Forcing additional shares on dissenting member.*]—An art. of assocn. of a co. providing that the directors might require a shareholder to take up additional shares in a certain ratio was altered by a resolution of the majority of the shareholders, applt. (*inter alios*) dissenting. The alteration struck out the words "three shares for every 250 lb. of butter fat" supplied by a member & substituted "one share for every 66 lb. of butter-fat." Applt. was called upon to take up additional shares in accordance with the alteration, but refused to do so :—*Held :* the art. was not one that could be amended under Ont. Act, 1906, s. 142, so as to force additional shares on a dissenting member, & applt. was not bound by the alteration objected to.—

3693. *Add. Annotation :—As to* (2) **Consd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3698. *Add. Annotation :*—**Expld. & Distd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

3702. *Add. Annotation :*— **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3703. *Add. Annotation :*— **Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3704. *Add. Annotation :*— *As to* (2) **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3704a. —— Interference by court.]—The power to alter or add to the arts. under 1908 Act, s. 13 (1), must be exercised, not only in the manner required by law, but also *bonâ fide* for the benefit of the co. as a whole, & the question whether a given alteration of or addition to the arts. is for the benefit of the co. is a question for the shareholders, acting *bonâ fide*, & not for the ct., & the ct. will not interfere with the action of the shareholders except on grounds on which it would interfere with a verdict of a jury.—Shuttleworth *v.* Cox Brothers & Co. (Maidenhead), Ltd. (1926), 43 T. L. R. 83, C. A.

3729. Before this case insert "*Compare* Corporations, Vol. XIII., pp. 339 *et seq.*"

3736. *Add. Citation :*—13 Mans. 316.

3770. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3771. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3775. *Add. Annotation :*—*As to* (2) **Apld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

3779. *Add. Annotation :*—**Expld. & Apld.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3787a. —— —— ——.]—Wall *v.* Exchange Investment Corpn., No. 3811a, *post.*

3811. *Add. Annotation :*—**Apld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

3811a. —— —— —— Whether decision of chairman final.]—An art. provided that no objection should be made to the validity of any vote except at the meeting at which it was tendered, & that every vote, whether given in person or by proxy, not disallowed at any meeting should be deemed valid for all purposes :—*Held :* the decision of the chairman, who, in the *bonâ fide* exercise of the power conferred upon him by the art., had refused to disallow a vote by proxy to which objection had been taken at the meeting, was final & would not be reviewed by the ct.—Wall *v.* Exchange Investment Corpn., [1926] Ch. 143 ; 95 L. J. Ch. 132 ; 134 L. T. 309, C. A.

3826. *Add. Annotation :*—**Consd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

3841a. —— Revocation of proxy received after commencement of meeting but before poll taken — Vote valid.]—Spiller *v.* Mayo (Rhodesia) Development Co. (1908), Ltd., [1926] W. N. 78.

3847a. —— —— Vote valid unless disallowed at meeting — Whether decision of chairman final.]—Wall *v.* Exchange Investment Corpn., No. 3811a, *ante.*

3874. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

3874a. —— —— Adjournment of second meeting to date more than month from date of first meeting.]—Where a meeting, held for the purpose of confirming as special resolutions resolutions passed as extraordinary resolutions at a meeting held less than a month before, is adjourned, for *bonâ fide* reasons, to a date more than a month from the date of the meeting at which the resolutions were passed, & the resolutions are confirmed at the adjourned meeting, they are valid within 1908 Act, s. 69 (2).—Neuschild *v.* British Equatorial Oil Co., [1925] 1 Ch. 346 ; 94 L. J. Ch. 201 ; 133 L. T. 227 ; 41 T. L. R. 414 ; 69 Sol. Jo. 440.

3878. Before this case insert "*Compare* Corporations, Vol. XIII., p. 340."

3881a. —— —— ——.]—Spiller *v.* Mayo (Rhodesia) Development Co. (1908), Ltd., [1926] W. N. 78.

3882. *Add. Annotation :*—**Refd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

3882a. —— —— —— Re-election of retiring director.]—Spencer *v.* Kennedy, No. 2879a, *ante.*

3917. *Add. Annotation :*—*As to* (2) **Refd.** Glanvill, Enthoven *v.* I. R. Comrs. (1924), 131 L. T. 818.

3934a. Locality of debt created.]—A British co. held shares in another British co. which had its head office & board of directors in Australia, though it had a London committee for registering transfers of shares & issuing certificates. The co. having declared a dividend :—*Held :* as the co. holding the shares was resident in England & the local habitation of the shares was in England, the debt created by the declaration of a dividend was situate in England.—Pass *v.* British Tobacco Co. (Australia), Ltd. (1926), 42 T. L. R. 771 ; *sub nom.* London & South American Investment Trust, Ltd. *v.* British Tobacco Co. (Australia), Ltd., [1927] 1 Ch. 107 ; 96 L. J. Ch. 58 ; 70 Sol. Jo. 1021.

Macdonald *v.* Normanby Co-operative Dairy Factory Co., Ltd., [1923] N. Z. L. R. 122.—N.Z.

3939 l. *Alteration a breach of contract.*]—A shareholder in a co. must be taken to know that one of the incidents of membership of a co. is that the co. may, by adopting the proper method, *bonâ fide* alter its articles in a way which may prejudicially affect his interest, & provided that the alteration in the article is not inconsistent with the objects set out in the memorandum of association, & is *bonâ fide* made in the interest of the co., the shareholder would be bound by such an alteration.

A co. cannot commit a breach of contract by altering its articles.—Hari Chandana Jooa Deva *v.* Hindustan Co-Operative Insurance Society, Ltd. (1924), I. L. R. 52 Calc. 739.—IND.

PART III. SECT. 30, SUB-SECT. 3.—B. (f).

c l. ——.]—A shareholder, who is present at a meeting of shareholders, can waive his right to be given notice of the intention to move a special resolution ; the giving notice of such intention is only prescribed in order to give shareholders time to consider the matter.—*Re* Excel Footwear Co., *Ex p.* Nova Scotia Trust Co., [1922] 2 D. L. R. 712 ; 56 N. S. R. 195 ; 3 O. B. R. 748.—CAN.

PART III. SECT. 30, SUB-SECT. 7.—G. (a).

q l. —— *Valid.*]—A co. purported to allot unissued shares to a director in consideration of his services to the co. :—*Held :* there being a surplus available for distribution by way of dividend among the shareholders, it was open to the co. to deal with the surplus as they thought fit, & the shares were validly issued.—*Re* Horne-Wendt, Ltd., [1924] 3 D. L. R. 116 ; 55 O. L. R. 413.—CAN.

PART III. SECT. 30, SUB-SECT. 7.—I.

3991 l. *Rights of shareholders of cumulative preference shares—Company in liquidation.*]—*Re* New Zealand Hardware Co., Ltd., [1926] N. Z. L. R. 76.—N.Z.

3954. *Add. Annotation :*—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3984. *Add. Annotations :*— **Consd.** *Re* Speir, Holt *v.* Speir, [1924] 1 Ch. 359; I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395. **Folld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982; *Re* Taylor, Waters *v.* Taylor, [1926] Ch. 923. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52; I. R. Comrs. *v.* Doncaster (1924), 93 L. J. K. B. 338; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

3990. *Add. Annotation :*— **Refd.** Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771.

4007. *Add. Annotation :*— **Mentd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

4019. *Add. Citation :*—93 L. J. Ch. 49.

4020. *Add. Annotation :* As to (1) **Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395.

4023a. —— **Writing back to profit account—Profits written off in excess of requirements.**] A co. which applies its profits in writing off a corresponding amount of the value of the goodwill, instead of carrying them to a goodwill depreciation reserve fund, but which has not finally & unreservedly capitalised those profits, may write back to profit account so much of the depreciation written off goodwill as proves to be in excess of proper requirements.—STAPLEY *v.* READ BROTHERS, LTD., [1924] 2 Ch. 1; 93 L. J. Ch. 513; 131 L. T. 629; 40 T. L. R. 442; 68 Sol. Jo. 519.

4035. *Add. Annotation :* **Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

4037. *Add. Annotation :* **Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

4037a. —— ——] PARKER & COOPER, LTD. *v.* READING. No. 3160a, *ante*.

4050a. —— **Under agreement—To repurchase shares—Allotted in consideration of advance to company—Lender requiring repayment of loan.**] Pltf., with the view to assist his son-in-law in obtaining the appointment of business manager of a limited co. of which the two defts. were directors & shareholders, entered into a written agreement with the co. & defts. to advance to the co. a sum of £1,500 by the purchase of 1,500 £1 preference shares of the co., the repayment of that sum being secured by the co.'s undertaking, in the event of pltf. or his son-in-law terminating that agreement, to procure the repurchase of the shares at par & to secure the purchase money therefor by accepting bills drawn by pltf.; & in that arrangement the two defts. joined as sureties guaranteeing the due performance by the co. of its part of the agreement. Pltf., accordingly, advanced £1,500 to the co., & accepted transfers from the co. of the same number of its preference shares. Upon the son-in-law desiring to withdraw from the managership, pltf. in pursuance of a power in that behalf contained therein gave the co. notice to terminate the agreement & required the co. to procure the repurchase of the shares & to accept his bills for £1,500; but the co. refused to comply with those requirements & denied liability under the agreement on the ground that the performance of it would involve a purchase by the co. of its own shares, & would therefore be *ultra vires* & illegal. In an action against defts. under their guarantees:—*Held:* the agreement, having been entered into between the parties in good faith & in the honest belief that it was *intra vires* & legal, the defence that the agreement was, upon the grounds above mentioned, *ultra vires* the co. & therefore unenforceable could not be maintained; & pltf. was entitled to judgment for £1,500 with interest.—GARRARD *v.* JAMES, [1925] 1 Ch. 616; 94 L. J. Ch. 234; 133 L. T. 261; 69 Sol. Jo. 622.

4074. After this case for "—— **Remuneration of directors.**]" read "—— **Remuneration—Of directors.**]"

4080. *Add. Annotation :*—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205.

4094. *Add. Annotations :* — **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

4104a. —— —— **Disputes between directors.**]—STANFIELD *v.* GIBBON, [1925] W. N. 11.

4108. *Add. Annotation :*—**Mentd.** Schneiders *v.* Abrahams, [1925] 1 K. B. 301.

4117a. —— —— ——] —PARKER & COOPER, LTD. *v.* READING, No. 3160a, *ante*.

4142. *Add. Annotation :*—**Refd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33.

4144. *Add. Annotation :*—**Consd.** Havana Cigar & Tobacco Factories *v.* Oddenino, [1924] 1 Ch. 179.

4166. *Add. Annotation :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

4170. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4191. *Add. Annotation :*—**Mentd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

PART III. SECT. 31, SUB-SECT. 2.—B.

a i. —— ——] *Re* INDIA Shop Co., [1924] 1 D. L. R. 625; 34 C. R. R. 137.—CAN.

4051 ii. —— ——] It is not *ultra vires* a co. to receive a transfer of its shares to itself in compromise of an action. At least the co. is estopped from setting up such a plea after taking the benefit of the compromise.—*Re* E. J. LANE, LTD., *Ex p.* MILLMAN, [1924] 1 D. L. R. 269; 4 C. B. R. 308.—CAN.

PART III. SECT. 31, SUB-SECT. 2.—I.

a i. ——] Where a co. assigned money to secure payment of a debt owing to the assignee by another co., with which the assignor co. had no prior or contemporaneous agreement: *Held:* the co.'s memorandum of assn. gave it no such power.—ARMSTRONG LUMBER CO. *v.* STEVENSON, [1925] 4 D. L. R. 560; [1925], 3 W. W. R. 451. CAN.

PART III. SECT. 31, SUB-SECT. 5.—B. (a).

a i. —— ——]—Before the incorporation of a co. a partner in the name of the partnership entered into an agreement with pltf., under which pltf. undertook the sale of products on a commission basis. The agreement on its face showed that pltf. was to operate on behalf of the co. then in process of incorporation:—*Held:* commissions earned after incorporation of the co. were not recoverable against the partnership: but to recover from the co. pltf. would not be bound to prove an express contract by the co., as the performance & acceptance of his services raised an implied contract to pay.—POWER *v.* EDMONTON LUMBER EXCHANGE (1920), 3 W. W. R. 10; 53 D. L. R. 465.—CAN.

4232. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4236. *Add. Annotation :* —**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4237. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4239. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4258. *Add. Annotation :*—**Mentd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

4283. *Add. Annotation :*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4393. *Add. Annotation :*—*As to* (1) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

4403. *Add. Annotation :* —**Mentd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

4427. *Add. Annotation :* **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

4458. *Add. Annotations :*—**Refd.** Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 887; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255.

4524. For this number read "**4525.**"

4525. For this number read "**4524.**"

4568. *Add. Annotation :*—**Mentd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691.

4571. *Add. Annotation :* —**Mentd.** *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 304.

4607. *Add. Annotation :* —**Consd.** Garrard *v.* James, [1925] Ch. 616.

4623. *Add Annotations :*—*As to* (2) **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 150.

4625. *Add Annotation :*—*As to* (1) **Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

4637. *Add. Annotation :* —**Refd.** Lemon *v.* Austin Friars Investment Trust, [1926] Ch. 1.

4637a. Whether certificate securing income stock is debenture.] —Defts., a limited co., issued certificates for securing income stock, & a certificate was issued to pltfs. whereby the co. certified that it was indebted to them in a certain amount. The certificate stated

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PART III. SECT. 31, SUB-SECT. 5. B. (b).

4209 vii. — .] Prior to the incorporation of pltf. co., a document containing the terms of a proposed contract between it & deft. co. was executed & handed to the organisation committee of pltf. co. as evidence of the fact that defts. were willing to enter into the contract as soon as pltf. co. should have become incorporated. After pltf. co. had become incorporated & received its certificate entitling it to commence business it duly executed the document, & the contract was thereafter acted on: — *Held:* pltf. co. was entitled to sue for damages for breach of such contract. ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LANDS, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 31 B. C. R. 533. **CAN.**

PART III. SECT. 31, SUB-SECT. 9.—A.

q i. —— *Incorporation abroad.*]—A co., registered under Cos. Acts, presented a petition for an alteration of its memorandum of assocn. by the addition of a power "to procure the co. to be incorporated, registered, or recognised in any foreign country." The ct., while sanctioning the power to procure the registration or recognition of the co. in a foreign country, refused to confirm the power to procure its incorporation there.—*Re* TAYSIDE FLOORCLOTH CO., LTD., [1923] S. C. 590.—**SCOT.**

4308 iv. ——.]—A cemetery co. sought additional power to act as "stone & marble cutters, masons, quarriers & sculptors, florists, gardeners, & undertakers." The ct., in the absence of evidence of any convenience or advantage to the co., restricted the new powers by limiting them to powers to be used in connection with, & as incidental to, the co.'s main business of cemetery owners. EDINBURGH SOUTHERN CEMETERY CO., LTD., [1923] S. C. 867.—**SCOT.**

r i. ——.]—A co. sought the addition of a power to sell, let on rent, or lease the undertaking of the co., or any branch or part thereof. The ct. restricted the power to any branch or part of the undertaking . . . being an adjunct to the main undertaking. *Re* TAYSIDE FLOORCLOTH CO., LTD., [1923] S. C. 590. — **SCOT.**

PART III. SECT. 32, SUB-SECT. 1.— C.

q i. — — — .] —Deft. co. bought land from pltfs., & in payment therefor transferred to pltfs. a block of shares in another co., agreeing to repurchase from pltfs. at a fixed price, on or before a fixed day, the shares, or as many of them as should not have been previously sold or transferred by pltfs.: *Held:* the agreement to repurchase was *ultra vires* deft. co. as Cos. Act, s. 41, expressly prohibits a purchase of shares in another co. GRANT *v.* DOMINION LOOSE LEAF CO. (1924), 56 O. L. R. 43.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.— A.

ei. — — — .] Deft. "as the largest shareholder" of a co. claimed damages for false representations made as to the business of the co., which had the effect of depriving the co. of its clients: *Held:* the cause of action alleged was not defamation but an *injuria* done merely to the co., for which the co., & not an individual shareholder, was entitled to sue. GEORGE L. HOGG & SONS, LTD., [1926] App. D. 11. **S. AF.**

p i. — — — — — — — — .]—A shareholder suing on behalf of himself & all other shareholders can maintain an action alleging illegal use of the co.'s money, when it clearly appears that an application to the co. to authorise such an action would be futile.—HOGGETTS *v.* VICTORIA MACHINERY DEPOT, LTD., [1924] 2 D. L. R. 657; 33 B. C. R. 425. **CAN.**

q i. — — — — — .] —FARRELL *v.* MAGIC SILVER-BLACK FOX CO., [1924] 3 D. L. R. 132. **CAN.**

PART III. SECT. 33, SUB-SECT. 13.— A. (b) ii.

ar. "*Credible testimony*" *of inability to pay—What is.*] —In an action for reduction of a lease, brought by a co., defender was sequestrated & obtained an award of expenses. Pursuers having reclaimed, defender, founding upon an unfavourable balance-sheet of pursuers which was about a year old, moved that pursuers should be required to find caution for expenses under 1908 Act, s. 278. The ct. refused the motion, as it did not appear by "credible testimony" that pursuers would be unable to pay defender's expenses if he were successful, in respect that a later balance-sheet showed that the financial depression from which pursuers had been suffering was passing off, &, further, in respect that pursuers had a responsible directorate & a profitable record in the past, & that there was no suggestion that any creditor was pressing them for payment which he was unable to get.—EDINBURGH ENTERTAINMENTS, LTD. *v.* STEVENSON, [1925] S. C. 868. **SCOT.**

PART III. SECT. 34, SUB-SECT. 1.— A. (a).

4569 ii. — — .] — ZIMMERMAN *v.* ANDREW MOTHERWELL OF CAN., LTD. (TRUSTEE) [1926], 3 D. L. R. 933, 3 W. W. R. 42. — **CAN.**

PART III. SECT. 34, SUB-SECT. 2. C. (b) i.

r i. *Issue before prospectus filed.*] Debentures: *Held:* valid, notwithstanding the co. had not filed a prospectus before the issue of the debentures. MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 535. **CAN.**

PART III. SECT. 34, SUB-SECT. 2. C. (b) ii.

k i. — — — — .] Persons lending money to a co. have a right to assume that the essentials of internal management have been carried out by the co.—MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 535. **CAN.**

PART III. SECT. 34, SUB-SECT. 2.— C. (c).

m i. — — — .] Where debentures were issued before the co. had filed a prospectus: *Held*, even if the debentures were not valid in the hands of the debenture holder, they were valid in the hands of the pledgee to whom they had been assigned.—MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 535. — **CAN.**

that three-fourths of the net profits of the co. in each year or a sum equal thereto were to be applied in paying off the income stock *pari passu*. Under conditions indorsed on each certificate a register of the certificates was to be kept at the co.'s registered office, wherein would be entered the names & addresses of the registered holders & particulars of the certificates held by them & by clause 9 of the conditions the rights of the holders might be modified with the consent of the holders of three-fourths in value of the certificates. Pltfs. were refused inspection of the register, & brought an action for an injunction to restrain defts. from interfering with their right, under 1908 Act, s. 102, to inspect the register:—*Held:* the certificates were debentures within the sect., & pltfs. were entitled to the injunction.—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., [1926] Ch. 1; 95 L. J. Ch. 97; 133 L. T. 790; 41 T. L. R. 629; 69 Sol. Jo. 762, C. A.

4666. *Add. Annotation:* **Mentd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955.

4688a. —— —— **Refusal to give information to debenture-holders—Acquisition of debentures from cestuis que trust at inadequate prices.**]—*Re* MAGADI SODA CO., LTD., No. 7409a, *post*.

4690. *Add. Annotation:* **Reld.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4697. *Add. Annotation:*—*As to* (2) **Reld.** National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

4700. *Add. Annotation:*—**Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

4716. *Add. Annotation:*—**Folld.** Heaton & Dugard *v.* Cutting, [1925] 1 K. B. 655.

4716a. —— —— ——.]—Judgment having been recovered in an action against a limited co., which had issued debentures giving a floating charge over its property, execution was issued under a *fi. fa.*, & the sheriff went into possession. In order to avoid a sale the co.'s managing director paid the judgment debt & costs, whereupon the sheriff withdrew. Thereafter, & before the sheriff paid the amount of the debt & costs to the execution creditors, the debenture-holders in deft. co. appointed a receiver, who claimed to be entitled to the money in the hands of the sheriff:—*Held:* the money was paid to the sheriff as a debt owing by defts. to the execution creditors, who were therefore entitled to retain it as against the receiver.—HEATON & DUGARD, LTD. *v.* CUTTING BROTHERS, LTD., [1925] 1 K. B. 655; 94 L. J. K. B. 678; 133 L. T. 41; 41 T. L. R. 288, D. C.

4730a. —— **Floating charge over part of assets already charged.**]—Where a debenture trust deed, creating a general floating charge over all the undertaking & assets of the co. both present & future, reserves power to the co. in the ordinary course of its business to create specific charges over any of those assets, then although a second general floating charge over all the property comprised in the first charge but ranking *pari passu* with or in priority to that charge, is, under the general law, incompatible with the first charge & ranks subject to it, yet there is no principle of law which forbids the creation of a second floating charge over part only of those assets ranking *pari passu* with, or in priority to, the earlier floating charge, so long as the later floating charge is within the limits of the power reserved.

A debenture trust deed created a general floating charge over all its undertaking & assets both present & future, but reserved to the co. power to create in priority to that charge such mtges. or charges as the co. should think proper "by the deposit of any dock warrants, bills of lading, or other similar commercial documents, or upon any raw materials, or finished or partly finished products & stock for the purpose of raising money in the ordinary course of the business of the co." In pursuance of the power & in the course & for the purposes of its business, the co. raised £12,000 & secured payment thereof by charging all the before-mentioned documents, materials & stock, both present & future, by way of a floating security to rank in priority to the floating charge created by the trust deed:—*Held:* the power reserved to the co., except as to subject-matter & purpose, was unlimited; it enabled the co. to choose the form of a floating charge, if required, & the second charge was valid & entitled to priority over the first charge.—*Re* AUTOMATIC BOTTLE MAKERS, OSBORNE *v.* AUTOMATIC BOTTLE MAKERS, [1926] Ch. 412; 95 L. J. Ch. 185; 134 L. T. 517; 70 Sol. Jo. 402, C. A.

4755. *Add. Annotations:*—*As to* (1) **Reld.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. *Generally*, **Mentd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

4781. *Add. Citations:*—93 L. J. Ch. 27; 130 L. T. 93.

4783a. —— **Delay in issue to retain credit.**]—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* LLOYD'S FURNITURE PALACE, LTD., [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 20.

Under "**Right to inspect register of debenture holders & have copies.**]—*See* 1908 Act, s. 102," add as follows:—

4808. *Add. Annotation:*—**Distd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4809. *Add. Annotation:*—**Consd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4825a. ——.]—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., No. 4637a, *ante*.

PART III. SECT. 34, SUB-SECT. 2.—A. (b) 1.

§ 1. —— —— *Whether misfeasance claims excluded.*]—Where a debenture purports to create a charge on "the undertaking of the co. & all its property present & future including uncalled capital," misfeasance claims are included in such charge.—*Re* BUICK SALES, LTD., [1926] N. Z. L. R. 24.—N.Z.

4863. *Add. Annotation:*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

4866. *Add. Annotation:*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

4925. *Add. Annotation:*—**Consd.** Employers' Liability Assce. *v.* Sedgwick (Collins) (1926), 95 L. J. K. B. 1015.

4931. *Add. Annotation:*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431

4933. For the paragraph in the original volume substitute the following paragraph:—

—— —— **Due registration—Particulars of property charged insufficiently entered.**]—A co. with the object of securing payment of its overdraft at pltf. bank "demised" to the bank a certain leasehold factory with all the movable "plant used in or about the premises" for a term of about 996 years. The bank sent the indenture to the registrar of companies for registration under 1908 Act, s. 93. In the particulars required to be filed pursuant to that sect. the instrument was described as a mtge. of the leasehold premises, no mention being made of the chattels. The registrar entered the description of the instrument in the register in similar terms, identifying it by its date, & omitting all mention of any charge on the chattels. Subsequently the sheriff, in execution of a judgment recovered by deft. against the co., seized certain chattels of the co. upon the mortgaged premises, including certain motor vans. The bank claimed the goods in question under their mtge., & obtained from the registrar a certificate "that a mtge. or charge dated"—specifying the date & the parties to the instrument—"was registered pursuant to Cos. Act, s. 93." On an interpleader issue to try the title of the bank as against the execution creditor:—*Held:* as the certificate identified the instrument of charge, & stated that the mtge. or charge thereby created had been duly registered, it must be understood as certifying the due registration of all the charges created by the instrument, including that of the chattels, & it was conclusive evidence of the due registration of the chattels none the less because the register in omitting to mention them was not merely defective but misleading.—NATIONAL PROVINCIAL & UNION BANK OF ENGLAND *v.* CHARNLEY, [1924] 1 K. B. 431; 93 L. J. K. B. 241; 130 L. T. 465; 68 Sol. Jo. 430; [1924] B. & C. R. 37.

4941. *Add. Annotation:*—*Generally*, **Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

4975. *Add. Annotation:*—**Apld.** Thomas *v.* Todd, [1926] 2 K. B. 511.

4979. *Add. Citations:*—93 L. J. Ch. 42; 130 L. T. 178.

4979a. —— **Effect of voluntary winding up.**]—Where under a debenture deed in the common form made by a limited co. the debenture-holder has appointed a receiver to carry on the business of the co., the authority of the receiver so to do is terminated by the voluntary winding up of the co., & on a contract thereafter made by the receiver as such he will be personally liable.—THOMAS *v.* TODD, [1926] 2 K. B. 511; 95 L. J. K. B. 808; 135 L. T. 377; 42 T. L. R. 491.

4982. *Add. Annotation:*—**Consd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

5016. *Add. Annotation:*—**Mentd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955.

5091. *Add. Annotation:*—**Apld.** Thomas *v.* Todd, [1926] 2 K. B. 511.

5149a. —— **Application of assets—Deficiency.**]—In a debenture-holders' action where there is a deficiency, the assets must be applied in the following order: (1) costs of realisation, (2) costs including remuneration of receiver, (3) costs, charges & expenses of debenture trust deed including the trustees' remuneration, (4) pltfs.' costs of action, (5) preferential creditors, (6) debenture-holders.—*Re* GLYNCORRWG COLLIERY CO., RAILWAY DEBENTURE & GENERAL TRUST CO. *v.* THE CO., [1926] Ch. 951; 70 Sol. Jo. 857.

5170. *Add. Annotation:*—**Refd.** *Re* Glyncorrwg

PART III. SECT. 34, SUB-SECT. 3.—K. (a) i.

4857 i. *Exercise of voting powers by holders—Whether fiduciary.*]—Where the majority of the holders of first mtge. bonds of a corpn. adopted resolutions approving of a scheme modifying the rights of the bondholders, in the face of a protest by the minority:—*Held:* the majority did not exercise their powers under the trust deed *bonâ fide*.—O'BRIEN (M. J.), LTD. *v.* BRITISH AMERICA NICKEL CORPN., LTD. & NATIONAL TRUST CO., LTD., [1925] 4 D. L. R. 455; 57 O. L. R. 536.—**CAN.**

PART III. SECT. 34, SUB-SECT. 4.—A. (a).

4859 iii. ——— ———.]—*Re* HOLMES (SAMUEL), LTD. (1923), 68 I. L. T. 9.—**IR.**

PART III. SECT. 34, SUB-SECT. 4.—B. (b).

si. *Agreement to give security.*]—Deft. co., having agreed to purchase from pltf. co. a motor, paid £100 on delivery, & agreed to give security over the motor for the balance, & a bill of sale was prepared, but was not executed.—*Held:* the agreement to give security had not created an equitable mtge., which, not being within the definition of "mtge." in Cos. Act, 1908, s. 130 (11), was not rendered void by that sect. by reason of non-registration.—NEW ZEALAND PERPETUITY CO., LTD. *v.* HOON HAY QUARRIES, LTD., [1925] N. Z. L. R. 73. **N.Z.**

PART III. SECT. 34, SUB-SECT. 6.—B. (b) ii.

sv. *What amounts to default in payment of interest.*]—It cannot be said that there has been default until demand has been made for payment at the place, or one of the places, named in the bond for payment of interest.—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMMELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—E. (d).

sw. *Affidavits—Made before institution of proceedings—Inadmissible.*]—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMMELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

5120 i. *Ex parte application.*]—A receiver ought not to be appointed *ex p.*, especially for the purpose of taking possession of & managing a going business, except in extraordinary circumstances.—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMMELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—E. (f) ii.

5148 i. *Form of judgment.*]—MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 535.—**CAN.**

PART III. SECT. 35.

aa. *Meaning of "being wound up"—Under Companies Ordinance, 1901 (c. 29), s. 47.*]—The words do not refer to a winding up under any particular Act in the sense of a dissolution, but mean a winding up of a co. in the sense of a realisation of the assets, a distribution of the proceeds among creditors & an adjustment of the rights of shareholders among themselves, & therefore a co. may be "being wound up" in this sense under Hkgcy. Act, as well as under either Dominion or provincial Winding-up Acts.—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 550.—**CAN.**

Colliery Co., Railway Debenture & General Trust Co. v. The Co., [1926] Ch. 951.

5184a. On authority of receiver—To carry on business of company.]—THOMAS v. TODD, No. 4976a, *ante*.

5186a. Debenture given for money bonâ fide advanced—After knowledge of presentation of petition for winding up.] The fact that a person to whom a debenture was granted after a petition to wind up the co. had been launched had knowledge of the launching of such petition does not prevent the ct. from validating the debenture, if it was given for money advanced by the debenture-holder for the purpose of *bonâ fide* assisting the co. to pay wages, & the costs of appct. to such an application to validate his debenture, notwithstanding 1908 Act, s. 205 (2), & of the liquidator, may be paid out of the assets of the co.—*Re* PARK WARD & CO., LTD., [1926] Ch. 828; 95 L. J. Ch. 581; 135 L. T. 575; 70 Sol. Jo. 670.

5194. *Add. Annotation:* **Consd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

5316. *Add. Annotation:* **Mentd.** R. v. Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

5337. *Add. Annotation:*—**Refd.** Loch v. Blackwood, [1924] A. C. 783.

5343. *Add. Annotation:* **Mentd.** *Re* Quintin Dick, Clonourry v. Fenton, [1926] Ch. 992.

5346. *Add. Annotation:* **Mentd.** Bank of Liverpool & Martins v. Holland (1926), 13 T. L. R. 20.

5354. *Add. Annotation:*—**Refd.** Loch v. Blackwood, [1924] A. C. 783.

5357. *Add. Annotation:* **Refd.** Loch v. Blackwood, [1924] A. C. 783.

5357a. ——.] A co. was registered in Barbados under Cos. Act, 1910, of Barbados, as a public co., in order to carry on testator's business & to divide the profits of it between members of his family entitled under his will to share them; the managing director had a preponderating voting power. Upon a petition for winding up by shareholders who were not directors, it appeared that the directors had omitted to hold general meetings, or to submit accounts, or recommend a dividend, & that they had laid themselves open to the suspicion that their object in so omitting was to keep petitioners in ignorance of the co's. position & affairs & to acquire petitioners' shares at an under-value:—*Held:* the power to wind up the co. under sect. 127 (vi) of that Act [which was identical with 1908 Act, s. 129] was not confined to cases in which there were grounds analogous to those mentioned earlier in the sect.; & in the circumstances of the case, regard being had to the domestic character of the co., petitioners were entitled under that provision to a winding-up order.—LOCH v. BLACKWOOD (JOHN), LTD., [1924] A. C. 783; 93 L. J. P. C. 257; 131 L. T. 719; 40 T. L. R. 732; 68 Sol. Jo. 735; [1924] B. & C. R. 209, P. C.

5372. *Add. Annotation:*—**Refd.** Loch v. Blackwood, [1924] A. C. 783.

5388. *Add. Annotation:*—**Consd.** Loch v. Blackwood, [1924] A. C. 783.

5397a. —— Omission to hold general meetings or to submit accounts.]—LOCH v. BLACKWOOD (JOHN), LTD., No. 5357a, *ante*.

5474. *Add. Annotation:*—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

5604. *Add. Annotation:*—**Mentd.** Hunter v. Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493.

5648. *Add. Annotation:* **Refd.** *Re* City Life Assce., [1926] Ch. 191.

5841a. Issue of debenture For money advanced to company for payment of wages.]—*Re* PARK WARD & CO., LTD., No. 5186a, *ante*.

5881. *Add. Annotation:*—**Mentd.** R. v. Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

5953. *Add. Annotation:*—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

PART III. SECT. 36, SUB-SECT. 1.—A.

t. Add "*revsd.* 14 S. C. R. 624."

PART III. SECT. 36, SUB-SECT. 2. C. (a).

a 1. ——.] Where the notice provided for by Winding-up Act, R. S. C., 1906 c. 144, s. 4, has not been served, & a petition for a winding-up order is presented, the question whether the co. is "unable to pay its debts as they become due," within sect. 3 (a), must be determined by the ct. upon the material filed.—*Re* MILO WHEAT CO., LTD., [1925] 2 D. L. R. 1170; [1925] 1 W. W. R. 1112; 35 Man. L. R. 1; 3 C. B. R. 707.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—D. (d).

t 1. —— *Differences between two sole members.*]—Where resp. had treated the co. as his own business in such a way as to destroy his fellow-shareholder's confidence in the impartiality of his administration:—*Held:* it was just & equitable that the co. should be wound up.—THOMSON v. DRYSDALE, [1925] S. C. 311.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 2.—D. (e).

5397a 1. —— *Managing director conducting affairs as though company his private business.*]—BAIRD v. LEES, [1924] S. C. 83.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 3.—B. (b) iv.

q 1. ——.]—A petition for the winding up of a co., filed by a creditor with the view of enforcing payment of a disputed debt, is an abuse of the process of the ct. & should be dismissed.—PYDA SATYARAZU v. GUNTUR COTTON & PAPER MILLS CO., LTD. (1924), I. L. R. 48 Mad. 267.—**IND.**

5439 ii. —— ——.]—SMITHFIELD COLD STORAGE & EXPORT CO. OF SOUTH AFRICA, LTD. v. LEVER (1924), 45 N. L. R. 73.—**S. AF.**

PART III. SECT. 36, SUB-SECT. 3.—D. (a) i.

q 1. —— *Exceptional circumstances.*] A creditor of a co. presented a petition for the winding up of the co. by the ct. The co. had gone into voluntary liquidation, & the petition was opposed on the ground that the majority of the creditors desired the voluntary winding up to be continued. A statement of the co.'s affairs showed that its liabilities amounted to £335,000, while its assets were estimated at £9,300; that about £116,000, stated to be irrecoverable, had been advanced to directors of the co.; & that the co. had received large advances from associated cos., part of which were completely secured. Creditors to the extent of £200,000, including one whose claim amounted to about two-thirds of the co.'s whole indebtedness, had assented to the voluntary winding up, & petitioner, who was a creditor to the extent of £5,000 only, was the sole creditor who objected to the co. being wound up voluntarily:—*Held:* although as a general rule the co. would have regard to the wishes of a majority of creditors, the circumstances were of such a special character that an exception to the general rule should be made, & a winding-up order pronounced.—ROUBOULIS v. MANN, MACNEAL & CO., LTD., [1926] S. C. 637.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 8.—C. (c).

sb. *Change of solicitor — When permissible—Under order of court.*]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 3 D. L. R. 9; 2 W. W. R. 440; 34 Man. L. R. 482.—**CAN.**

PART III. SECT. 36, SUB-SECT. 9.—A.

se. *Notice of meeting — To shareholders.*]—It is the duty of the trustee to give shareholders of an insolvent co. the same notice of the first meeting of creditors as is sent to those who are ordinarily deemed to be creditors, but the trustee's failure to do so does not invalidate the meeting, unless the irregularity has prejudiced the shareholders.—*Re* PATRICIA APPLIANCE STORE, LTD., [1923] 3 D. L. R. 1160; 52 O. L. R. 215; 2 C. B. R. 466.—**CAN.**

6150. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6150a. ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

6161. *Add. Annotation :*—*As to* (2) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6173. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6173a. —— Article relieving directors from loss—Unless arising from wilful neglect or default.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

6212. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6222. *Add. Annotation :* **Refd.** *Re* Darwen & Pearce, Associated Paper Mills v. Barnes (1926), 95 L. J. Ch. 487.

6229. *Add. Annotation :* **Refd.** Spencer v. Ashworth Partington, [1925] 1 K. B. 580.

6241. *Add. Annotation :*—**Mentd.** Hunter v. Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493.

6346. *Add. Annotation :* *As to* (1) **Refd.** Swift v. Board of Trade, [1925] A. C. 520.

6374. *Add. Annotation :* **Mentd.** Britannia Hygienic Laundry Co. v. Thornycroft (1925), 94 L. J. K. B. 858.

6400. *Add. Annotations :* **Mentd.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487; Costello v. Brown (1924), 94 L. J. K. B. 220; *Re* Snowdown Colliery Co., South-Eastern Coalfield Extension Co. v. Snowdown Colliery Co. (1925), 94 L. J. Ch. 305.

6406. *Add. Annotation :* **Mentd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6409. *Add. Annotation :*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

6427. *Add. Annotation :*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6442. *Add. Annotation :* **Mentd.** *Re* Pink, Elvin v. Nightingale (1926), 70 Sol. Jo. 1090.

6444. *Add. Annotation :*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6446. *Add. Annotations :*—*As to* (2) **Refd.** *Re* City Life Assce., [1926] Ch. 191. *Generally*, **Mentd.** Martin v. Stout, [1925] A. C. 359; Tyldesley U. D. C. v. Leigh R. D. C. (1925), 23 L. G. R. 243.

6447. *Add. Annotations :*—*As to* (2) **Apld.** *Re* City Life Assce., [1926] Ch. 191. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339.

6455a. —— Joint partnership debt—Creditor member of firm.]—In the winding up of a co. the liquidator sought to set off against a debt due by the co. to a creditor a debt alleged to be due to the co. by a partnership firm of which the creditor was a member:—*Held:* the alleged debt of the partnership firm being a joint & not a joint & several debt, it could not be set off against the separate debt due by the co. to the partner.—*Re* PENNINGTON & OWEN, LTD., [1925] Ch. 825; 95 L. J. Ch. 93; 134 L. T. 66; 41 T. L. R. 657; 69 Sol. Jo. 759; [1926] B. & C. R. 39, C. A.

6456. *Add. Annotations :* **Refd.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487. **Mentd.** *Re* Snowdown Colliery Co., South-Eastern Coalfield Extension Co. v. Snowdown Colliery Co. (1925), 94 L. J. Ch. 305.

6460. *Add. Citations :* 130 L. T. 1; [1923] B. & C. R. 114; *affg.* S. C. *sub nom. Re* WEBB (H. J.) & CO. (SMITHFIELD, LONDON), LTD., [1922] 2 Ch. 369.

Add. Annotation : **Refd.** *Re* Winget, Burn v. Winget, [1924] 1 Ch. 550.

6462. *Add. Annotation :* **Refd.** *Re* Winget, Burn v. Winget, [1924] 1 Ch. 550.

PART III. SECT. 36, SUB-SECT. 10. C. (d) i.

sd. *Something in nature of misconduct.*]—To make a person liable under Cos. Act, 1908, s. 254, he must be shown to have been guilty of some misconduct by which the co. has suffered loss. There must be actual loss or damage measurable in terms of money.—*Re* BUICK SALES, LTD., [1926] N. Z. L. R. 24.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 10. C. (d) iii.

se. *Payments to discharge directors' liability on guarantee.*]—When a co. is insolvent to its directors' knowledge, & the directors cease payment of all but small & pressing accounts & pay all the rest of the co.'s takings into the bank to wipe out the co.'s overdraft, not with intention to prefer the bank, but in order to wipe out the directors' liability as sureties under their personal guarantee of the overdraft, such payments do not amount to a misfeasance or breach of trust within Cos. Act, 1908, s. 254.—*Re* LUNNEY (H.) & CO., LTD., [1925] N. Z. L. R. 907.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 10.—E. (b).

sf. *How enforced—Right of liquidator to bring action.*]—Cos. Winding-up Act (Sask.), ss. 16 & 22, which establish a summary statutory procedure, enabling a liquidator to get payment from a contributory under the Act instead of proceeding by action, are only permissive & not obligatory, & the liquidator is not bound to have recourse to that procedure but may proceed by way of action.—MASSICAR v. MCKENZIE & SON, [1924] 2 D. L. R. 1242; 2 W. W. R. 521.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—E. (c).

sf. ——.]—There is nothing in Winding-up Act to justify the suggestion that in settling the list of contributories regard is to be had only to those shareholders whose liability is subject to call.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

sg. —— *Deceased shareholder.*]—*Re* CANADIAN CORDAGE & MANUFACTURING CO. (1923), 54 O. L. R. 486.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—E. (e) ii.

6293 i. —— *Power of liquidator to make immediate call—For whole of unpaid balance on shares.*]—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—C. (a).

6423 i. ——.]—Shareholders are not entitled to set off against their liability for immediate payment of the amounts unpaid on their shares any dividends owing to them.—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—**CAN.**

e. Add "*revsd.* 16 S. C. R. 456."

PART III. SECT. 36, SUB-SECT. 11.—D. (b).

ah. *Price of wheat supplied under State wheat scheme.*]—The Minister charged with the administration of Wheat Marketing Acts sold a quantity of wheat to a co. which before payment went into liquidation:—*Held:* the debt being a Crown debt, the Minister was entitled to priority of payment in the administration of the assets of the co. In the winding up of a co. the Crown is not bound by the provisions of Cos. Act, 1893, & its amendments.—*Re* OCKERBY & CO., LTD. (1922), 25 W. A. L. R. 25.—**AUS.**

PART III. SECT. 36, SUB-SECT. 11.—D. (c).

ak *Municipal taxes & taxes due to Public Utilities Commission. Payable before Crown claims.*] *Re* INTERNATIONAL METAL WORKS, LTD., *Re p.* R., [1924] 1 D. L. R. 302, 4 C. B. R. 378.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—D. (d).

al. *Effect of Bankruptcy Act, s. 45 (4).*]—The above sect. does not restrict the amount of the debt for which an officer, director or shareholder of a co., which has made an authorised assignment, may in the first instance prove, & postpone the right to prove for the balance until all other creditors have been paid in full, but while allowing him to prove for the full amount of his claim, it merely restricts the amount of payment or satisfaction in the aggregate which he may receive

6467. *Add. Annotations :*—**Reld.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487. **Mentd.** *Re* Snowdown Colliery Co., South-Eastern Coalfield Extension Co. *v.* Snowdown Colliery Co. (1925), 94 L. J. Ch. 305.

6565. *Add. Annotation :*—**Reld.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

6740. *Add. Annotation :*—**Reld.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

6745. *Add. Annotation :*—**Reld.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

6746a. Payment to principal creditor—To relieve surety.]—Where a payment has been made to a principal creditor with the intent to prefer a guarantor of the debt, Bkpcy. Act, 1914 (c. 59), s. 44, enables the liquidator in a compulsory winding up to recover payment from the person actually preferred.

A private co., of which a father & son were the only directors & shareholders, was ordered to be wound up, & within the preceding three months the son paid a sum of £1,503 odd into the co.'s bank to reduce an overdraft of the co. to secure which his father had given a guarantee. The liquidator claimed repayment of the sum as being a fraudulent preference within 1908 Act, s. 210, & a preliminary objection being raised that in any event no order for repayment could be made :—*Held :* the motive of the son in making the payment being to keep the business going, there was no fraudulent preference, & the summons must be dismissed.—*Re* STANLEY (G.) & Co., [1925] Ch. 148 ; 94 L. J. Ch. 187 ; 133 L. T. 37 ; 69 Sol. Jo. 36 ; [1925] B. & C. R. 1.

6750. *Add. Annotation :*—**Mentd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 953.

6751. *Add. Annotations :*—**Mentd.** King *v.* Sunday Pictorial Newspapers (1920), (1924), 41 T. L. R. 229 ; Knight *v.* Ponsonby, [1925] 1 K. B. 545.

6775. *Add. Annotations :*—**Reld.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281 ; Greenberg *v.* Cooperstein, [1926] Ch. 657 ; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 135 L. T. 673. **Mentd.** Brighton College *v.* Marriott, [1925] 1 K. B. 312.

6811. *Add. Annotation :*—**Mentd.** Hunter *v.* Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493.

6823a. —— **Motion to validate debenture.**]—*Re* PARK WARD & Co., LTD., No. 5186a, *ante*.

6862. *Add. Annotation :*—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6874. *Add. Annotations :*—**Consd.** Chibbett *v.* Robinson (1924), 132 L. T. 26 ; Mudd *v.* Collins (1925), 133 L. T. 186. **Mentd.** Reed *v.* Seymour (1926), 95 L. J. K. B. 796.

6904a. —— —— **By receiver—Liability of receiver.**]—THOMAS *v.* TODD, No. 4979a, *ante*.

6936. *Add. Citations :*—130 L. T. 1 ; [1923] B. & C. R. 114 ; *affg.* S. C. *sub nom. Re* WEBB (H. J.) & Co. (SMITHFIELD, LONDON) LTD., [1922] 2 Ch. 369.

Add. Annotation :—**Reld.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550.

6936a. —— **Deduction of income tax from payment of interest by company on mortgage.**]—A co. having mortgaged all its property & assets, subsequently passed a resolution for voluntary winding up. Between the date of the mtge. & the commencement of the winding up the co. made no profits, but paid three several sums by way of interest on the mtge. less income tax. The co. never paid or accounted for such deductions of tax to the Inland Revenue Comrs. :—*Held :* inasmuch as such deductions could not be said to answer the description of a tax "assessed" on the co. within 1908 Act, s. 200 (1), the Crown could not be treated as having any preferential rights over other creditors in respect of it, & there was nothing in the language of the sub-sect. giving any priority to the debt.—*Re* LANG PROPELLER, LTD., [1927] Ch. 120 ; 95 L. J. Ch. 516 ; 42 T. L. R. 702 ; 70 Sol. Jo. 836, C. A.

6937. *Add. Annotations :*—**Mentd.** King *v.* Sunday Pictorial Newspapers (1920), (1924), 41 T. L. R. 229 ; Knight *v.* Ponsonby, [1925] 1 K. B. 545.

6958. *Add. Annotation :*—*As to* (1) **Reld.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52.

6965. *Add. Annotations :*—**Mentd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52 ; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

6974. *Add. Citation :*—[1923] B. & C. R. 139.

6977. *Add. Annotations :*—*As to* (1) **Reld.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52 ; *Re* Park Ward & Co., Ltd., [1926] Ch. 788 ; 95 L. J. Ch. 516 ; 135 L. T. 673 ; 42 T. L. R. 702 ; 70 Sol. Jo. 836, C. A. (2) **Reld.** *Re* Lang Propeller, Ltd., [1927] Ch. 120 ; 95 L. J. Ch. 516 ; 42 T. L. R. 702 ; 70 Sol. Jo. 836, C. A.

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on account of his claim as proven until claims of other creditors have been satisfied.—*Re* CALGARY FURNITURE STORE, LTD. & HIGGS, [1924] 2 D. L. R. 303 ; [1924] 1 W. W. R. 1137 ; 4 C. B. R. 538.—CAN.

PART III. SECT. 36, SUB-SECT. 13.—D. (a).

n. Add " *revsd.* 33 A. R. 426."

PART III. SECT. 36, SUB-SECT. 15.—E.

am. *Deposit of lease—To prevent creditor cashing post-dated cheque.*]—Within the period of three months prior to the bkpcy. of a co. a lease was deposited with a creditor of the co. by way of security & to prevent the creditor from cashing a post-dated cheque which he held from the co. :—*Held :* as the purpose of the payment was to benefit debtor & to save him from creditors' pressure, there was no fraudulent preference.—*Re* DECOSTA & DISTRICT CO-OPERATIVE SOCIETY, LTD. (1924), 68 I. L. T. 42.—IR.

PART III. SECT. 36, SUB-SECT. 17.

an. *Order of province.*]—To enforce an order of the ct. of another province made under Winding-up Act the registrar should, on production thereof, enter it without direction as an order of the Supreme Ct. of British Columbia & proceed upon it as an ordinary record of that ct.—*Re* HOME BANK OF CANADA & WINDING-UP ACT, [1925] 1 D. L. R. 734 ; 34 B. C. R. 321.—CAN.

PART III. SECT. 36, SUB-SECT. 18.—C.

t. Add " *revsd.* 14 S. C. R. 624."

PART III. SECT. 37, SUB-SECT. 3.—E.

d i. —— *Sufficiency of resolution.*]—An extraordinary resolution for the winding up of a co., that it cannot " by reason of the passing & enforcement of Prohibition Act continue its business " is not the equivalent of the extraordinary resolution, authorised by Cos. Act, R. S. B. C., 1911 (c. 39), s. 226 (3), as it stood prior to Nov. 1917, to the effect that the co. cannot by reason of its liabilities continue its business.—DUNCAN & GRAY, LTD. *v.* SILVER SPRING BREWERY, [1925] 4 D. L. R. 724 ; [1925] 3 W. W. R. 675.—CAN.

PART III. SECT. 37, SUB-SECT. 4.—E.

as. *Payment to person purporting to be liquidator.*]—Where, after payment made to one purporting to be a liquidator, deft. discovered that the payee was not legally a liquidator :—*Held :* the doctrine of estoppel was not applicable.—DUNCAN & GRAY, LTD. *v.* SILVER SPRING BREWERY, [1925] 4 D. L. R. 724 ; [1925] 3 W. W. R. 675.—CAN.

Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

6980. *Add. Annotation :*—**Refd.** I. R. Comrs. v. Burrell, [1924] 2 K. B. 52.

7014a. —— **Validity of winding-up order in question.**]—The validity of a winding up cannot be questioned on a motion in the winding up, but must be challenged in independent proceedings.—*Re* EMPIRE BUILDERS, LTD., *Re* TRANSVAAL UNITED TRUST & FINANCE CO., LTD. (1919), 88 L. J. Ch. 459; 121 L. T. 238; 63 Sol. Jo. 608.

7034. For the paragraph in the original volume substitute the following paragraph :—

—— **Judgment after winding up—Right of company to recover money from third party based on company's liability to judgment creditor — No ground for not staying execution.**]—The manager of a co. fraudulently & without authority accepted bills of exchange in the co.'s name, & upon those bills the co. was sued to judgment by the holders. After the commencement of the action the co. went into voluntary liquidation. The co. subsequently recovered judgment in an action against a third party for damages for having wrongfully facilitated the commission of the above fraud, & for having thereby rendered the co. liable on the bills. The judgment creditors in the first action then sought to attach under a garnishee order the money so payable to the co. by the third party. On an application by the co. to stay the garnishee proceedings :—*Held :* where a judgment is recovered against a co. which is in voluntary liquidation the invariable practice of the ct. is to stay execution of the judgment unless there are very exceptional reasons for exercising its discretion otherwise, & the fact that the only right of the co. to recover the money claimed from the garnishees was based upon the co.'s liability to the judgment creditors was not such an exceptional circumstance as to take the case out of the general rule.—ANGLO-BALTIC & MEDITERRANEAN BANK v. BARBER & Co., [1924] 2 K. B. 410; 93 L. J. K. B. 1135; 132 L. T. 1; [1924] B. & C. R. 224, C. A.

7074. *Add. Annotation :* — **Consd.** Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc., [1925] Ch. 769.

7076. *Add. Annotation :* - **Refd.** Wall v. Exchange Investment Corpn., [1926] Ch. 143.

7083. *Add. Annotation :* - - **Consd.** Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc., [1925] Ch. 769.

7102. *Add. Citation :*—130 L. T. 250.

7124. *Add. Annotation :* **Mentd.** Eastwood & Holt v. Studer (1926), 31 Com. Cas. 251.

7146. *Add. Annotation :* **Mentd.** Public Trustee v. Elder, [1926] Ch. 776.

7371a. —— **Scheme involving reduction of capital — Modification of rights of different classes of shareholders.**]—*Re* ODHAMS PRESS, LTD., [1925] W. N. 10.

7382a. — **Scheme involving reduction, reorganisation, voluntary to compulsory liquidator — Lien of voluntary liquidator over books.**]—*Re* STOREMASTER & Co., LTD., [1923] N. Z. L. R. 221.—**N.Z.**

PART III. SECT. 37, SUB-SECT. 13.—E. (b).

sp. *Whether member of old company.*]—In 1917 a deed to carry into effect a scheme of liquidation was drawn up, but it was never in fact registered nor executed, although its terms were actually carried out, in that the great majority of shareholders in the co. surrendered their shares & received others in exchange. In 1924 certain of these shareholders hold a meeting & appointed two of their number as liquidators & attempted to assume the direction of the liquidation :—*Held :* the shareholders, who in 1917 had relinquished their shares, accepting shares in the other cos. in exchange, had ceased to be either shareholders or contributories & had no right to take any part in the management of the co.'s affairs.—HUNTER v. DAMODAR DAS (1924), I. L. R. 46 All. 759.—**IND.**

PART III. SECT. 37, SUB-SECT. 13.—E. (f).

e. Add "*revsd.* 1 O. L. R. 480."

PART III. SECT. 37, SUB-SECT. 14.—B.

sq. *Avoidance—Jurisdiction to order—For limited purpose only.*]—A co. went into voluntary liquidation, & was dissolved. Thereafter intimation was received from the Inland Revenue that a sum was repayable to the co. in respect of excess profits duty, & a petition was presented to the ct. by the co. & the liquidator for an order declaring the dissolution of the co. to have been void, for the purpose of the exercise by the liquidator of authority to receive the payment & to grant receipt therefor :—*Held :* it was incompetent under 1908 Act, s. 223, to declare the dissolution of a co. void for a limited purpose only. The petition was amended by the deletion of all reference to the purpose, & the ct. granted it as amended.—*Re* CRAMPSEY & JUTE CO., LTD., [1924] S. C. 209.—**SCOT.**

st. —— *Application more than two years after dissolution.*]—Eight years after a co. was dissolved by order of the ct., it was discovered that the liquidator had not dealt with a feu held by the co. The superior & the liquidator presented a petition craving the ct. to declare the dissolution void, & to authorise the liquidator to grant a disposition of the feu *ad perpetuam remanentiam* in favour of the superior. The ct. refused the order craved.—MACDONALD'S (LORD) CURATOR, [1924] S. C. 163-4.—**SCOT.**

sw. —— ——.]—A co. was dissolved for the purpose of reconstruction after the liquidator had entered into an agreement for the transfer of the assets, including certain heritable property, to a new co. The new co. entered into possession of the heritable property, but did not obtain a conveyance, & itself subsequently went into liquidation. More than two years after the dissolution of the old co., a petition was presented to the ct. by the liquidators of both cos. praying the ct. to declare the dissolution of the old co. to have been void, & to empower the liquidator of that co. to grant such titles as might be requisite to vest the heritable property in the new co. The ct. refused the order craved.—FORTH SHIPBREAKING CO., [1924] S. C. 489-90.—**SCOT.**

PART III. SECT. 37, SUB-SECT. 15.—A. (b) iii.

s i. ——.]—*Held :* in the absence of proof that creditors' rights or those of the contributories would be prejudiced by the voluntary winding up, applications for compulsory winding up must be dismissed.—HARBAR CHAND v. KARAM CHAND (1924), I. L. R. 6 Lah. 340.—**IND.**

PART III. SECT. 37, SUB-SECT. 15.—A. (c).

ss. *Handing over of books by voluntary to compulsory liquidator — Lien of voluntary liquidator over books.*]—*Re* STOREMASTER & Co., LTD., [1923] N. Z. L. R. 221.—**N.Z.**

PART III. SECT. 39, SUB-SECT. 1.—B.

ff. —— *Preferential treatment of creditor.*] Where a co. proposed a scheme of arrangement, under which a bank appeared to be secured to the extent of 20*s.* in the pound :—*Held :* the scheme was not one which, in view of the apparent preferential treatment accorded to the bank, the ct. should sanction.—LAINIÈRE DE ROTHAIS v. GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

PART III. SECT. 39, SUB-SECT. 1.—D.

7387 ll. ——.]—The ct. refused to approve of a scheme of arrangement proposed by the insolvent debtor, an incorporated co., & accepted by a majority of its creditors, whereby the preferred & secured creditors were to be paid by debtor, & the unsecured creditors paid in full by the allotment & issue to them of fully paid-up preference shares in the debtor co. or in a new co. to be incorporated. The scheme was not one which should be forced upon an unwilling creditor.—*Re* LINDSAYS, LTD. (1921), 64 D. L. R. 717; 51 O. L. R. 116; 2 C. B. R. 49.—**CAN.**

PART III. SECT. 39, SUB-SECT. 1.—F. (a).

7399 ll. —— —— —— ——.]—Where a bank, being a secured creditor, improperly voted with the unsecured creditors :—*Held :* in the absence of the bank as a voting creditor, the necessary three-fourths in value would not have been obtained, & the procedure had not complied with 1908 Act, s. 120 (2).—LAINIÈRE DE ROTHAIS v. GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

sation & increase of capital.]—*Re* WALTERS (STEPHEN) & SONS, LTD., No. 839a, *ante*.

7407a. —— **Omission to advertise—Sufficient majority present.**]—Where there was an inadvertent omission to advertise a scheme of arrangement under 1908 Act, s. 120, but it was satisfactorily proved that thirty out of thirty-one shareholders of the co. had received the notices:—*Held:* the meetings had in substance been held in manner prescribed, & the ct. would not insist on further meetings being convened.—*Re* ANGLO-SPANISH TARTAR REFINERIES, LTD. (1924), 68 Sol. Jo. 738.

7409a. ——.]—(1) Proxy papers to be used at meetings to consider schemes of arrangement should follow the form settled by the judge, which empowers the proxy "to vote for me & in my name [ ] the said scheme either with or without modification as my proxy may approve," & contains opposite the blank a marginal note as follows: "If for, insert 'for,' if against, insert 'against,' & strike out the words after 'scheme' & initial alterations." Proxies not according to this form will be properly rejected.

(2) On a scheme of arrangement being sanctioned, the ct. refused to re-appoint the original trustees for the debenture-holders, it having been proved that they had refused to give information to the debenture-holders as to the trust estate, & had in fact acquired debentures from their *cestuis que trust* at inadequate prices, & not in their own names, but in the names of cos. controlled by them.—*Re* MAGADI SODA CO., LTD. (1925), 94 L. J. Ch. 217; 41 T. L. R. 297; 69 Sol. Jo. 365; [1925] B. & C. R. 70.

7479. *Add. Annotation:*—**Consd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 417.

Part V. - Insurance Companies.

7482. *Add. Annotation:* **Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

7482a. **Power of company to vary rate of interest on loans to policy-holders.**]—In an action by a policy-holder against an insurance co. for a declaration that the co. were not entitled to charge more than 4 per cent. interest on sums advanced on security of their policies, plff. based his case on an alleged collateral contract or on established practice:—*Held:* there was no collateral contract, & the practice proved was to make loans at the rate of interest fixed by the board, & not to charge one fixed rate for all time.—THISELTON *v.* COMMERCIAL UNION ASSURANCE CO., [1926] Ch. 888; 95 L. J. Ch. 417; 70 Sol. Jo. 892.

7490a. —— **Reinsurance of fire risks.**]—The business of reinsuring fire risks is fire insurance business within Assurance Companies Act, 1909 (c. 49), & a foreign co., which carries on the business of reinsurance of fire risks in the United Kingdom, but does not otherwise carry on insurance business in England, is bound to deposit with the Paymaster-General the sum prescribed by s. 2 (1) of the Act.—FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) *v.* A.-G., [1925] A. C. 639; 94 L. J. K. B. 712; 133 L. T. 151; 41 T. L. R. 473; 69 Sol. Jo. 543; 30 Com. Cas. 252, H. L.; *affg.* S. C. *sub nom.* A.-G. *v.* FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) (1924), 93 L. J. K. B. 679, C. A.

7549. *Add. Annotations:*—*As to* (1) **Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281. *Generally*, **Mentd.** Brighton College *v.* Marriott, [1925] 1 K. B. 312.

7593. *Add. Annotation:* **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

7609. *Add. Annotation:* —**Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

7623. *Add. Annotation:* *As to* (1) **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7625. *Add. Annotations:*—**Distd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. **N.F.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7626. *Add. Annotation:*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7627. *Add. Annotations:*—**Overd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339.

PART III. SECT. 39, SUB-SECT. 1.—F. (b).

sy. *Time for lodging.*]—Creditors' proxies need not be lodged at any particular date.

Where proxies lodged by creditors within forty-eight hours of a meeting to approve a scheme of arrangement had been disallowed:—*Held:* the rejection of the proxies was wrong.—LAINSBURY *v.* ROBERTSON & GILES (Dover & Hosiery) CO., LTD., [1926] S. C. 91.—**SCOT.**

PART III. SECT. 40, SUB-SECT. 2. A.

ol. —— *Liquidation of company on non-compliance with statutory formalities.*]—A co. which failed to comply with Cos (Reconstitution of Records) Act (N.I.), 1923, & was thereupon dissolved, may be "replaced on" & "restored to" the register in accordance with sect. 5 (1).—*Re* CLONARD BRICK & ESTATE CO., LTD., [1926] N. 17.—**IR.**

PART IV. SECT. 4.

ss. *Position of depositors.*]—If a co. is deprived of the power to receive money on deposit, then in a subsequent bankcy. liquidation of the co. the depositors claiming for moneys on deposit prior to its losing such powers will be paid in full, before depositors claiming for deposits made after it lost such powers. Withdrawals made by one of the second class of depositors will be appropriated by the ct. to his deposits made before the loss of such powers.—*Re* NIPPON KINYU SHA, LTD. *Ex p.* TOTARO FUJINO, [1923] 1 D. L. R. 1156; 32 B. C. R. 56; [1923] 1 W. W. R. 850; 3 C. B. R. 673.—**CAN.**

PART V. SECT. 5.

aa. *British company doing business in Irish Free State.*]—A British insurance co. doing business in the Irish Free State after Dec. 1922 claimed not to be liable to make any deposits in the Irish Free State in consequence of Constitution & Adaptation of Enactments Act, 1922, art. 73, & External Cos. Adaptation Order, 1923, on the ground that the Act had been complied with in 1914, when deposits were made in England:—*Held:* the co. was bound to make such deposits in the Irish Free State.—WESTERN AUSTRALIAN INSURANCE CO., LTD. *v.* A.-G. FOR IRISH FREE STATE & MINISTER FOR INDUSTRY & COMMERCE (1925), 59 I. L. T. 109.—**IR.**

PART V. SECT. 8, SUB-SECT. 4.—A.

e i. —— *Dominion Winding-up Act.*]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 1 W. W. R. 133.—**CAN.**

e ii. —— ——.]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 1 W. W. R. 1050.—**CAN.**

7627a. ——.]—A policy-holder in a life assurance co. borrowed money from the co. on his policy. Before the death of the assured the co. was wound up, & the policy was valued under Assurance Companies Act, 1909 (c. 49). The policy-holder claimed to set off the value of the policy against his debt:—*Held:* Bkpcy. Act, 1914 (c. 59), s. 31, applied, there having been at the date of the winding up contractual obligations the breach of which might give rise to a claim for damages provable in the winding up, & the policy-holder was entitled to set off the value of his policy against his debt.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., [1924] 2 Ch. 330; 94 L. J. Ch. 33; 132 L. T. 50; 40 T. L. R. 755; 68 Sol. Jo. 753; [1924] B. & C. R. 231.

Annotation:—**Apprvd. & Folld.** *Re* City Life Assce. Co. (1925), 42 T. L. R. 45.

7627b. ——.]—In the liquidation of a life insurance co. policy holders who have mortgaged their policies to the co. to secure advances are entitled under Bkpcy. Act, 1914 (c. 59), s. 31, as made applicable by 1908 Act, s. 207, to set off the statutory value of their policies in full against the money due on their mtges., if the co. hold the mtges. at the date of the commencement of the winding up, but not if, before that date, the co. had equitably assigned the mtges. to trustees to secure a trust fund for the payment of a certain class of the policies. —*Re* CITY LIFE ASSURANCE CO., LTD., [1926] Ch. 191; 95 L. J. Ch. 65; 134 L. T. 207; 42 T. L. R. 46; 70 Sol. Jo. 108; [1925] B. & C. R. 233, C. A.

Part VII.—Unregistered Companies.

7650. *Add. Annotation:* **Refd.** Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

Part VIII.—Cost-Book Companies and Mining Companies in the Stannaries.

7726. *Add. Annotation:*—**Mentd.** Prager v. Blatspiel Stamp & Heacock, [1924] 1 K. B. 566.

7737. *Add. Annotation:*—*As to* (2) **Consd.** Spencer v. Ashworth Partington, [1925] 1 K. B. 589.

Part IX.—Statutory Companies for Public Purposes.

8045. *Add. Annotation:* **Distd.** Aylott v. West Ham Corpn., Sisson v. Same (1926), 95 L. J. Ch. 533.

8129. *Add. Annotation:* **Refd.** British Insulated & Helsby Cables v. Atherton, [1926] A. C. 205.

8176. *Add. Annotation:* **Refd.** British Insulated & Helsby Cables v. Atherton, [1926] A. C. 205.

8225. *Add. Annotation:*—**Consd.** Hartland v. Diggines (1924), 41 T. L. R. 131.

8243. *Add. Annotation:* **Refd.** British Insulated & Helsby Cables v. Atherton, [1926] A. C. 205.

8302. *Add. Annotation:*—**Distd.** Garrard v. James, [1925] Ch. 616.

8339. *Add. Annotation:* **Mentd.** Wright v. Morgan, [1926] A. C. 788.

8361. *Add. Annotation:* **Refd.** Kreditbank Cassel G. m. b. H. v. Schenkers, [1926] 2 K. B. 150.

8365. *Add. Annotation:* **Consd.** Garrard v. James, [1925] Ch. 616.

8389. *Add. Annotation:*—*As to* (1) **Apld.** Garrard v. James, [1925] Ch. 616.

8458. *Add. Annotation:* **Mentd.** Aylott v. West Ham Corpn., Sisson v. West Ham Corpn. (1926), 90 J. P. 90.

8459. *Add. Annotation:*—**Mentd.** Everett v. Griffiths, [1924] 1 K. B. 941.

PART VII. SECT. 2, SUB-SECT. 1.

7654 i. *Power of court—Under Companies Acts—Discretionary.*]—The general partner in a limited partnership consisting of two members presented a petition for the winding up of the partnership by the ct. & for the appointment of a liquidator:—*Held:* although it was competent for the ct. to appoint a judicial factor to wind up a limited partnership, the averments of parties showed that questions as to the liability of the limited partner were likely to arise, & it was more expedient that the partnership should be wound up by the ct.—M'LELLAN v. BORLAND, [1925] S. C. 474.—**SCOT.**

PART X. SECT. 6.

8b. *Effect of Act respecting Capacity of Companies, 1917 (c. 12).*]—The above Act deals only with the capacity of cos. to exercise their powers, & does not enlarge the powers themselves.—*Re* NORTH WESTERN TRUST CO., *Ex p.* PEACE OIL CO., LTD. (MAN.), [1925] 3 D. L. R. 407; [1925] 1 W. W. R. 765.—**CAN.**

Part XII.—Foreign Companies.

8510. *Add. Annotation* :—**Reld.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255.

8512. *Add. Annotation* :— **Reld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

8523. For the portion of the paragraph in the original volume commencing with "*Held* :" substitute the following paragraph :—

Held : (1) upon the construction of the decrees of the Soviet Govt., defts. had not proved that pltf. bank was dissolved or that the property in the bonds was no longer in the bank ; (2) it was not open to defts. to raise by way of defence to the action the objection that the London branch manager had no authority to bring the action in the name of pltf. bank, but they ought to have moved to strike out the name of the bank as pltf.—RUSSIAN COMMERCIAL & INDUSTRIAL BANK *v.* COMPTOIR D'ESCOMPTE DE MULHOUSE, [1925] A. C. 112 ; 93 L. J. K. B. 1098 ; 132 L. T. 90 ; 40 T. L. R. 837 ; 68 Sol. Jo. 841, H. L.

Annotations :—*As to* (1) **Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015. *As to* (2) **Followed.** Banque Internationale de Commerce de Petrograd *v.* Goukassow, [1924] A. C. 150. **Consd.** The Jupiter (No. 2), [1925] P. 69.

8524. For the paragraph in the original volume substitute the following paragraph :—

——.] —A Russian bank having a head office in Petrograd & a branch in Paris had, through its Paris branch, a series of financial transactions with a customer as the result of which the customer was largely indebted to the bank. In 1920 the Paris manager brought an action in the name of the bank against the customer to recover the amount of the debt. Deft. pleaded that by virtue of the nationalisation of the Russian banks under decrees of the Soviet Govt. pltf. bank had ceased to exist, & that no one had authority to sue in the name of the bank :—*Held* : the case was governed by *Russian Commercial & Industrial Bank* v. *Comptoir d'Escompte de Mulhouse*, No. 8523, *ante*, & the defence failed.—BANQUE INTERNATIONALE DE COMMERCE DE PETROGRAD *v.* GOUKASSOW, [1925] A. C. 150 ; 93 L. J. K. B. 1084 ; 132 L. T. 116 ; 40 T. L. R. 837 ; 68 Sol. Jo. 841, H. L.

8527a. —— —— **Whether company in existence.**—A Russian insurance co., having its principal office in Petrograd & a branch office in London, in accordance with 1908 Act, s. 274, filed with the registrar the name of C. as its authorised representative to accept service of process on its behalf. By a series of decrees passed in 1918 the Soviet Govt. purported to put all insurance cos. in Russia into liquidation & to appropriate their property. In the spring of 1923 C. sent a notice to the registrar that the co. which he represented had ceased to exist, & at his request this notice was placed upon the file. In the summer of the same year resps. brought an action against the co. by specially indorsed writ for payment of a sum of money claimed to be due to them in respect of certain insurance transactions. The writ was served upon C., who protested that he had no power to act for the co., & judgment was signed in default of appearance :—*Held* : (1) at the date of the writ the co. had not ceased to exist by virtue of the decrees of the Soviet Govt. ; (2) the service of the writ on C. was valid ; (3) the co. by putting on the file the name of a person authorised to accept service of process on its behalf agreed to submit to the jurisdiction of the ct., & it must be assumed that the Russian Govt. would, according to the comity of nations, recognise the judgment as effective.—EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK COLLINS & Co., [1927] A. C. 95 ; 95 L. J. K. B. 1015 ; 42 T. L. R. 749 ; *sub nom.* SEDGWICK COLLINS & Co., LTD. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T. 72, H. L. ; *affg.* S.C. *sub nom.* SEDGWICK COLLINS & Co. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1, C. A.

8542. *Add. Annotation* :—**Reld.** Sedgwick Collins *v.* Rossia Insce. of Petrograd, [1926] 1 K. B. 1.

8543. *Add. Annotation* :—**Reld.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808.

PART XII. SECT. 4.

t. (top of p. 1200). Read now "w."

w (p. 1200) l. —— *Company holding no licence in mortmain.*]—An insurance co., incorporated in a foreign State & holding no licence under Ontario Mortmain & Charitable Uses Act, but registered as authorised to do business in Ontario, applied to be registered as the transferee of a charge upon land :—*Held* : the co. was entitled to be registered without any qualification as to proceedings that might be taken under that Act or any other Act affecting the holding of land by corpns.—Re NEW YORK LIFE INSURANCE CO. (1924), 56 O. L. R. 403.—CAN.

e. (p. 1202). Add "*revsd.* 56 S. C. R. 539."

Part XIII.—Illegal Companies.

3581a. —— **Action against treasurer & secretary —Illegality will not prevent account.**]—GREENBERG *v.* COOPERSTEIN, No. 272a, *ante*.

3582. *Add. Annotation* :—**Reld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

3583. *Add. Annotation* :—**Reld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

3587. *Add. Annotations* :—**Reld.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281; Greenberg *v.* Cooperstein, [1926] Ch. 657; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal Owners' Assocn. (1926), 135 L. T. 673. **Mentd.** Brighton College *v.* Marriott, [1925] 1 K. B. 312.

Part XIV.—Companies under Private Acts.

3631. *Add. Annotation* :—**Mentd.** Harnett *v.* Bond, [1924] 2 K. B. 517.

3633. *Add. Annotation* :—**Mentd.** Douchar *v.* Gas Light & Coke Co., [1925] A. C. 691.

COMMONS AND RIGHTS OF COMMON.

NOTE.—As to commons & rights of common after 1925, *see* Law of Property Act, 1925 (c. 20), ss. 193, 194.

Part II.—Different Kinds of Rights of Common.

18. *Add. Annotation :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

144. *Add. Annotation :* —**Mentd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

224. *Add. Annotation :—Generally,* **Mentd.** Verge *v.* Somerville, [1924] A. C. 496.

226. *Add. Annotation :—As to* (2) **Refd.** Hodgson *v.* McCreagh (1923), 92 L. J. Ch. 426.

Part V.—Right of Free Warren.

323. *Add. Annotation :* **Consd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

323a. **In demesne land—Is warren in gross.]** Deft., lord of the manor of B., claimed sporting rights over pltfs.' freehold farms within the manor, basing his claim on a franchise of free warren appurtenant to the manor granted by the Crown to J., in 1301; alternatively, on a lost grant, presumed from immemorial user: *Held:* the grant to J. in 1301 was of a franchise in gross, & even if not in gross, it would have passed by J.'s subsequent alienation of the land, or become a franchise in gross by J.'s reserving the franchise upon the occasion of that alienation; there was therefore no title in deft. by the grant of the manor, & there was no evidence supporting his claim by prescription to the presumption of a lost grant.—HODGSON *v.* MCCREAGH (1923), 93 L. J. Ch. 339; 131 L. T. 340; 40 T. L. R. 10; 68 Sol. Jo. 58, C. A.

329. *Add. Annotation :*—**Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

339. *Add. Annotation :—Generally,* **Mentd.** The Fagernes, [1926] P. 185.

347. *Add. Annotation :*—**Consd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

347a. **Alienation reserving franchise of free warren.]** —HODGSON *v.* MCCREAGH, No. 323a, *ante.*

Part VI.—Creation and Proof of Rights of Common.

366. *Add. Annotation : Generally,* **Mentd.** Verge *v.* Somerville, [1924] A. C. 496.

452. *Add. Annotation :*—**Mentd.** Hulley *v.* Silversprings Bleaching Co., [1922] 2 Ch. 268.

Part VIII.—Acquisition of Commons under Compulsory Powers.

554. *Add. Annotation :*—**Mentd.** British Thomson-Houston Co. *v.* British Insulated & Helsby Cables, [1924] 2 Ch. 100.

Part IX.—Rights, Remedies and Liabilities of Lord of Manor as Owner of Soil.

640. *Add. Annotation :*—**Mentd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

Part XIII.—Inclosure of Commons and Common Fields.

886. *Add. Annotation :*—**Refd.** Back v. Daniels, [1925] 1 K. B. 526.

893. *Add. Annotations :*—*As to* (4) **Refd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135. *As to* (5) **Refd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.

899. *Add. Annotation :*—*As to* (1) **Consd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.

900. *Add. Annotation :* - **Consd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.

901. *Add. Citation :* [1922] 2 Ch. 187, n.

Add. Annotation :—**Folld.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.

903. For the paragraph in the original volume substitute the following paragraph : -

. . . . . ; By the Lanchester Inclosure Act, 1773, the moors & commons of the manor of Lanchester, Durham, were divided & allotted. The Act provided that the lord of the manor & his assigns should have, hold & enjoy all mines & minerals within & under the allotments, with full & free liberty of searching for, draining, winning & working the mines & minerals by any ways or means then in use or thereafter to be invented as fully & freely as he might or could have had, held, used & enjoyed the same in case that Act had not been made without paying any damages or making any satisfaction for so doing ; & also that the annual rental of a certain allotment to the justices should be applied in or towards the compensation of those allottees whose allotments were damnified by the exercise of the lord's mining rights, & that any deficiency should be made up by means of a rate levied upon all the allottees : - *Held :* (1) the case was governed by the decision of the Ct. of Appeal in *Consett Waterworks Co.* v. *Ritson*, No. 901, *ante*, which was a decision on the identical question arising on the construction of the same Act & in the same circumstances, & although the reasoning upon which that decision was founded had been disapproved of by the House of Lords in *Butterknowle Colliery Co.* v. *Bishop Auckland Industrial Co.*, No. 905, *post*, the decision itself had not been overruled & was therefore binding upon the ct., & defts. had a right to work the mines so as to let down the surface of the land without paying damages or making any compensation to pltfs. ; (2) (YOUNGER, L.J.) the decision at which the Ct. of Appeal had felt itself compelled to arrive in deference to authority binding upon it might quite well have been reached on the construction of the Act itself apart altogether from the decision by which it was bound.—CONSETT INDUSTRIAL & PROVIDENT SOCIETY, LTD. v. CONSETT IRON CO., [1922] 2 Ch. 135 ; 91 L. J. Ch. 630 ; 127 L. T. 383 ; 38 T. L. R. 584 ; 66 Sol. Jo. 452, C. A.

905. *Add. Annotation :* **Consd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.

906. *Add. Annotation :* **Consd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.

909. *Add. Annotations :* *As to* (2) **Consd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135. *As to* (3) **Consd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.

911. *Add. Annotation :* - *As to* (2) **Consd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.

913. *Add. Annotation :* **Refd.** Taylor v. British Legal Life Assce., [1925] Ch. 395.

939a. As to fences Power to direct maintenance. Notwithstanding the omission from Inclosure Act, 1836 (c. 115), of an express power for the comrs. to direct the repair & maintenance of fences, the erection of which by the respective allottees of land that Act empowers them to direct, such a power is nevertheless conferred upon them by the Act by implication. GARNETT v. PRATT, [1926] Ch. 897 ; 95 L. J. Ch. 453 ; 135 L. T. 171 ; 70 Sol. Jo. 736.

953. *Add. Annotation :* - **Mentd.** R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee, [1924] 1 K. B. 171.

985. *Add. Annotations : Generally*, **Mentd.** R. v. Nat. Bell Liquors, [1922] 2 A. C. 128 ; R. v. Lincolnshire J.J., *Ex p.* Brett, [1926] 2 K. B. 192.

1013. *Add. Annotation : Generally*, **Mentd.** White v. Williams, [1922] 1 K. B. 727.

1016. *Add. Annotation :* **Mentd.** Hulley v. Silversprings Bleaching Co., [1922] 2 Ch. 268.

1023. *Add. Annotation :* - *As to* (1) **Refd.** Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.

COMPULSORY PURCHASE OF LAND AND COMPENSATION.

Part I.—Compulsory Powers over Land.

4. *Add. Annotations :—As to* (2) **Distd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

19. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co., [1924] 1 K. B. 171.

Part II.—Conditions attached to the Powers.

23. *Add. Annotation :—As to* (2) **Consd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

56. *Add. Annotation :*—**Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

91. *Add. Annotations :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283; Roberts *v.* Hopwood, [1925] A. C. 578. **Mentd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

93. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

109. *Add. Annotation :—As to* (1) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

110. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

111. *Add. Annotation :—As to* (1) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

113. *Add. Annotation :*—**Mentd.** Roberts *v.* Hopwood, [1925] A. C. 578.

114. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

116. *Add. Annotation :*—**Refd.** Sydney Municipal Council *v.* Campbell, [1925] A. C. 338.

116a. —— **Land not bonâ fide intended to be taken for purpose.**]—Applts. had statutory power to acquire compulsorily land required for the purpose of making or extending streets, also land required for "carrying out improvements in or remodelling any portion of the city." In connection with the extension of a street, they resolved to acquire respts.' land for the latter purpose. They had previously been restrained from acquiring the land for the extension, on the ground that it was not really required for that purpose, but that its purchase was desired because of its probable increase in value. No plan for improving or remodelling the area was considered or proposed, & evidence as to proceedings in the council showed that applts. were endeavouring to give a new form to the transaction previously decided upon, rather than considering whether respts.' land was required for improving or remodelling :—*Held :* the evidence sustained the lower ct.'s conclusion of fact that applts. were exercising their powers for a purpose differing from those specified by the statute, & they had rightly been restrained from acquiring respts.' land.—SYDNEY MUNICIPAL COUNCIL *v.* CAMPBELL, [1925] A. C. 338; 133 L. T. 63; *sub nom.* SYDNEY MUNICIPAL COUNCIL *v.* CAMPBELL, SAME *v.* HUGHES MOTOR SERVICE, LTD., 94 L. J. P. C. 65, P. C.

126. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

139. *Add. Annotations :—As to* (1) **Distd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Consd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

140. *Add. Annotation :—Generally,* **Mentd.** Long *v.* Gowlett, [1923] 2 Ch. 177.

142. *Add. Annotations :*—**Consd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

143. *Add. Annotations :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557; Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

145. *Add. Annotation :*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

146. *Add. Annotation :—As to* (4) **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

PART II. SECT. 2, SUB-SECT. 1.

ca. *Land to use "otherwise for more convenient occupation" of building ...Municipal Act, s. 325.*]—SURREY DISTRICT COURT *v.* CANADA (1920), 57 D. L. R. 194; 58 S. C. R. 331.—CAN.

m i. —— *Public Works Act, R. S. B. C., 1911 (c. 189)—Validity of contract by Minister of Public Works.*]—A contract made by the Minister for the purchase of land for a public purpose does not bind the Crown unless the acquisition of the land has been authorised by an Order in Council, or a resolution in Council amounting to an order, even if the contract is sealed with the seal of the Department.—MACKAY *v.* A.-G. FOR BRITISH COLUMBIA, [1922] 1 A. C. 457.—CAN.

m ii. —— *Expropriation Act,* 1906 (c. 143)—*Discretion of Minister.*]—As to the propriety & necessity of expropriation the Minister is the sole judge & the ct. has no jurisdiction to interfere with his discretion.—R. *v.* IMPERIAL BANK OF CANADA, [1923] 3 D. L. R. 345.—CAN.

PART II. SECT. 2, SUB-SECT. 3.—B. (a).

ab. *Under 9 & 10 Geo. 5, c. 13, & Expropriation Act, R. S. C.,* 1906 (c. 143).]—BOLAND *v.* CANADIAN NATIONAL RY. CO., [1926] 4 D. L. R. 582; affg., [1925] 2 D. L. R. 1061; 56 O. L. R. 653.—CAN.

Part III.—Principles of the Law of Compensation.

155. *Add. Annotations:*—**Mentd.** Jackson *v.* Simons, [1923] 1 Ch. 373; Chaplin *v.* Smith, [1926] 1 K. B. 198.

166. *Add. Annotation:*—**Reid.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

169. *Add. Annotations:*—*As to* (2) **Reid.** Swift *v.* Board of Trade, [1925] A. C. 520; Swift *v.* Board of Trade, [1926] 2 K. B. 131.

171. *Add. Annotation:*—**Reid.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

PART III. SECT. 1, SUB-SECT. 2.—A.

149 ii. —— *Subsequent conveyance unregistered.*}—If a municipal corpn. takes expropriation proceedings for a highway under Municipal Act, s. 362, & compensation is awarded to the registered owner, the municipal corpn. cannot refuse payment to the registered owner on the ground that after filing his claim he executed a conveyance which remains unregistered.—North Cowichan Corpn. *v.* Gore-Langton, [1921] 2 W. W. R. 484.—CAN.

e i. —— *After expropriation.*}—The Crown expropriated the right to flood property which belonged to V., who subsequently sold to H. together with V.'s right to recover the compensation from the Crown for all damages caused by flooding & expropriation:—*Held:* H. was entitled to recover compensation for damages to his land by flooding, & by the expropriation of the easement to flood.—R. *v.* Hyr (1921), 21 Exch. C. R. 76.—CAN.

PART III. SECT. 1, SUB-SECT. 3.—A.

156 ii. ——.}—*Re* Scott & Oshawa Town (1922), 52 O. L. R. 504.—CAN.

156 iii. ——.}—The right to receive compensation for land taken depends upon the statute or order which authorises the taking, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re* Powell & Toronto Corpn., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—CAN.

f (p. 124) i. —— —— ——.}—Where a county corpn. expropriated certain toll roads:—*Held:* the value to the owner & not to the taker was the basis upon which the compensation should be awarded, & while the roads had become a burden instead of a benefit to their owners, they were entitled to be paid for the physical assets they possessed—road material in place, bridges, culverts, ditches & parts of roads owned in fee.—*Re* Ottawa & Gloucester Road Co. & County of Carleton (1921), 69 D. L. R. 486; 51 O. L. R. 467.—CAN.

f (p. 124) i. —— *Conflicting evidence.*}—R. *v.* Archer, [1925] 3 D. L. R. 355; [1925] S. C. R. 684.—CAN.

k (p. 125) i. —— —— ——.}—Where by reason of expropriation by the Crown the owners of the property taken suffer materially & are put to great trouble in moving, & the site so taken was most advantageous & it took several years of negotiating before they were able to find a new & suitable place for their operation, the ct. should add ten per cent. to the fair market value of the property taken, for contingent losses & inconvenience, in fixing the compensation.—R. *v.* Royal Nova Scotia Yacht Squadron (1921), 21 Exch. C. R. 160.—CAN.

k (p. 125) ii. —— —— ——.}—*Re* Torrance & Province of Ontario. *Re* Noble & Province of Ontario. *Re* Parkdale Boulevard, Ltd. & Province of Ontario, [1923] 3 D. L. R. 1136; 52 O. L. R. 325.—CAN.

p (p. 123) i. —— —— *Not value according to quantity survey.*}—R. *v.* Imperial Bank of Canada, [1923] 3 D. L. R. 345.—CAN.

se. —— *Value of assets necessary to operation of undertaking.*}—Toronto (City) Corpn. *v.* Toronto Railway Corpn., [1925] A. C. 177; 94 L. J. P. C. 35; 132 L. T. 401.—CAN.

PART III. SECT. 1, SUB-SECT. 3.—B.

u i. ——.}—R. *v.* Kelly (1921), 63 D. L. R. 402; 21 Exch. C. R. 205.—CAN.

PART III. SECT. 1, SUB-SECT. 3.—C.

e i. ——.}—R. *v.* Lynch's, Ltd. & Cozzolino (1920), 20 Exch. C. R. 158.—CAN.

169 i. For "169 i." read "170 i."

PART III. SECT. 1, SUB-SECT. 3.—D.

p i. —— ——.} *Re* Letson & Toronto Corpn. (1924), 56 O. L. R. 175.—CAN.

pi. —— *Flooding of neighbourhood.*}—The Crown expropriated the right to flood a part of L.'s property, on the erection of a dam, a public work. L. claimed, besides compensation for easement taken on his property, that he should be compensated for damages to his trade, resulting from the decrease of population, due to the flooding of neighbouring farms:—*Held:* no claim could arise in respect of an inconvenience common to the public generally.—R. *v.* Lafond (1921), 69 D. L. R. 127; 21 Exch. C. R. 58.—CAN.

176 iii. —— *Cost of removal.*}—While allowance ought not to be made for loss of business or estimated profits, yet where a lessee of a store has suffered a diminution of good-will, he is entitled to compensation although it is in the nature of a business loss. In addition, allowance must be made for the reasonable cost of moving, seeking a new location, loss of time, storage of furniture, depreciation in fixtures & dislocation of business occasioned by such removal.—R. *v.* Goldstein, [1924] Exch. C. R. 55.—CAN.

PART III. SECT. 1, SUB-SECT. 3.—E.

179 i. —— *Cost of acquiring new site.*}—In the course of arbn. proceedings to determine compensation for the portion of a lot taken & injury to the remainder, the corpn. offered to transfer part of an adjoining lot, which it did not own & had as yet taken no steps to expropriate:—*Held:* the offer should be taken into account & dealt with by the arbitrator in his award.—*Re* Garland & Toronto (1924), 55 O. L. R. 646.—CAN.

PART III. SECT. 1, SUB-SECT. 3.—I.

187 vi. —— *Subsequent improvements by owner.*}—Where an owner remains on the property after expropriation, & makes repairs to the buildings, & puts up temporary structures, he must assume the responsibility of such a course & its consequences, & nothing will be allowed him therefor.—R. *v.* Lynch's, Ltd. & Cozzolino (1920), 20 Exch. C. R. 158.—CAN.

187 vii. —— ——.}—R. *v.* Morrau (1921), 21 Exch. C. R. 82.—CAN.

PART III. SECT. 2.

191 i. *What constitutes severance—Part of land taken—Premises not contiguous—No legal right over intervening land.*}—Where by a previous expropriation property was severed by the right of way of a railway co. crossing it, & the use of a culvert under the tracks as a passage was only by sufferance & without legal right or title:—*Held:* if expropriation takes land on each side of the right of way & thus closes access to the culvert it is not a severance of the property which would entitle to compensation.—R. *v.* Loonan (1920), 20 Exch. C. R. 131.—CAN.

PART III. SECT. 3, SUB-SECT. 1.

ad. *General rule.*}—The right to receive compensation for land injuriously affected depends upon the statute or order which authorises the injurious affection, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re* Powell & Toronto Corpn., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—CAN.

ni. *Claim must be made within prescribed time.*}—Under Edmonton Charter a claim for compensation, because claimant's land will be injuriously affected by the closing of a street, is absolutely extinguished unless filed within the time fixed by the council in the notice which sect. 506 requires it to publish.—*Re* Edmonton Charter, Michaki. Hrywnkevsky Ukrainian Institute *v.* Edmonton Corpn., [1926] 1 W. W. R. 780.—CAN.

ao. *Railway Act, 1919—Spur track constructed along streets—Measure of compensation to adjacent landowners.*}—British Columbia Permanent Loan Co. *v.* Canadian Northern Ry. (No. 3), [1923] 2 D. L. R. 802; [1923] 1 W. W. R. 1072; 30 Can. Ry. Cas. 71; 16 Sask. L. R. 296.—CAN.

PART III. SECT. 3, SUB-SECT. 2.

af. *Land adjoining water-lot—Water-lot taken—Loss of riparian rights.*}—*Re* Snow & Toronto, [1924] 4 D. L. R. 1023; 56 O. L. R. 100.—CAN.

ag. *Land divided into lots—Some lots sold—Five lots taken for sewage plant.*}—*Held:* the owner of the unsold plots was entitled, over & above the actual value of the lots expropriated, to compensation for consequent depreciation in the value of the adjacent lands.—Montreal (City) *v.* McAnulty Realty Co., [1923] 2 D. L. R. 499; [1923] S. C. R. 272.—CAN.

215. *Add. Annotations :—As to* (1) **Apld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315. *Generally*, **Mentd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

216. *Add. Annotation :* — **Folld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

216a. —— —— ——.]—Applts. owned land immediately on the west side of a public road & a railway, & had thereon a school; on the east side they owned two small promontories of land on the margin of a public harbour. They had made on the promontories a bathing house & wharf, both of which they used in connection with the school, but no legal right of way across the railway was proved. The Crown took the two promontories for a public purpose, & upon an area wholly to the east of the railway, & including the two small promontories, made a large railway shunting yard. A claim by applts. to compensation for the damage to their property on the west of the railway by reason of the construction of the shunting yard having been rejected :—*Held :* the possession & control of the two promontories gave an enhanced value to applts.' land on the west side of the railway, & in respect of depreciation in value of those lands due to the anticipated legal use of works which might be constructed upon the two promontories, applts. were owners whose lands had been injuriously affected, & accordingly they were entitled to compensation; further, the ct. in assessing the compensation should have regard to the anticipated use of the promontories as part of a shunting yard, not to the actual use at the time of the assessment.—ROCKINGHAM SISTERS OF CHARITY *v.* R., [1922] 2 A. C. 315; 91 L. J. P. C. 198; 127 L. T. 608; 38 T. L. R. 782, P. C.

223. *Add. Annotation :*—**Reld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

245. *Add. Annotation :* — **Reld.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

265. *Add. Annotation :—As to* (1) **Reld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

323a. —— ——.]—ROCKINGHAM SISTERS OF CHARITY *v.* R., No. 216a, *ante*.

324. *Add. Annotation :—Generally*, **Mentd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

Part IV.—Compensation for Mines and Minerals.

343. *Add. Annotation :*— **Mentd.** Craddock *v.* Hunt, [1923] 2 Ch. 136.

355. *Add. Annotation :*— **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

367. *Add. Annotations :*—**Reld.** Swift *v.* Board of Trade, [1925] A. C. 520. **Mentd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529.

412. *Add. Annotations :*— **Reld.** Swift *v.* Board of Trade, [1925] A. C. 520. **Mentd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529.

Part V.—Procedure to acquire Land by Agreement.

418. *Add. Annotation : —Generally*, **Mentd.** *Re* Allott, Hanmer *v.* Allott, [1921] 2 Ch. 498.

Part VI.—Procedure to acquire Land otherwise than by Agreement.

478. *Add. Annotation :*— **Reld.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

526. *Add. Annotation : —As to* (1) **Reld.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

PART III. SECT. 3, SUB-SECT. 4.—A. (a).

227 iv. —— —— ——.]—The Crown not having expropriated any part of suppliant's property or any easement to flood the same :—*Held :* the case did not come within Exch. Ct. Act, s. 20, & the ct. had no jurisdiction to entertain the claim under Expropriation Act or any other provision of law. YATES *v.* R. (1920), 20 Exch. C. R. 173.—**CAN.**

227 v. —— ——.]—ALEXANDER BROWN MILLING CO. *v.* CANADIAN PACIFIC RY. CO., [1923] 4 D. L. R. 1136; 29 Can. Ry. Cas. 315; 52 O. L. R. 528.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (c) ii.

286 vi. —— ——.]—Where direct access to land on which a business is conducted is not cut off by the closing of a street, the fact that such closing will oblige persons going to & from such place of business & neighbouring properties to use a slightly less convenient route does not give the owner of such land a right to compensation.—*Re* EDMONTON CHARTER. FREEMAN CO., LTD. *v.* EDMONTON CORPN., [1923] 1 W. W. R. 778. **CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (c) iii.

s i. —— —— —— *Depreciation in value of land.*)—NELSON *v.* PACIFIC GREAT EASTERN RY. CO., OBLATE ORDER OF MARY IMMACULATE *v.* PACIFIC GREAT EASTERN RY. CO., LEFEAUX & CARLISLE *v.* PACIFIC GREAT EASTERN RY. CO. (1919), 67 D. L. R. 792; 27 B. C. R. 420.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—C. (a).

292 v. ——.]—The general depreciation of property resulting from being in the vicinage of a public work does not give rise to a claim by any particular owner.—R. *v.* LAFOND (1921), 21 Exch. C. R. 55.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 2.—D.

490 i. *Effect of—No right of action at common law for damages for rendering land useless & unsaleable not recoverable.*)—ALEXANDER BROWN MILLING CO. *v.* CANADIAN PACIFIC RY. CO. (1923) 4 D. L. R. 1136; 29 Can. Ry. Cas. 315; 52 O. L. R. 528.—**CAN.**

531. *Add. Annotation :*—**Reld.** Cardiff Corpn. v. Cook, [1923] 2 Ch. 115.

533a. —— —— **Rights of assignee.**]—A landowner has a right to deal with his property after a notice to treat, although the right must be exercised subject to the rights acquired by the undertakers by virtue of the notice & so as not to increase their obligations, & he is also entitled before acceptance to withdraw & amend his claim. But where a landowner, possessed of a leasehold interest, who has claimed £550 for compensation for disturbance & valued his leasehold interest at nil, subsequently, but before his claim is accepted, assigns his leasehold interest, his assignee stands in the same position as the landowner & can withdraw or amend the claim, either expressly or by sending in a claim in respect of the leasehold interest wholly inconsistent with the original claim, & the undertakers are not then at liberty to disregard the assignee & continue to treat & contract with the original landowner.—CARDIFF CORPN. v. COOK, [1923] 2 Ch. 115; 92 L. J. Ch. 177; 128 L. T. 530; 87 J. P. 90; 67 Sol. Jo. 315; 21 L. G. R. 279.

534. *Add. Annotation :* **Reld.** Matthey v. Curling, [1922] 2 A. C. 180.

592. *Add. Annotation :* **Mentd.** Early v. Drummond (1923), 30 T. L. R. 171.

Part VII.—Assessment of Purchase Price and Compensation.

650. *Add. Citations :*—[1922] 1 A. C. 27; 91 L. J. K. B. 202; 126 L. T. 258; 86 J. P. 25. *Add. Annotations :*- **Distd.** Thurrock, Grays & Tilbury Joint Sewerage Board v. Thames Land Co. (1025), 23 L. G. R. 648. **Mentd.** Thornely v. Leconfield, [1925] 1 K. B. 236.

650a. —— **Acquisition of land & appointment of arbitrator under Public Health Act, 1875 (c. 55).**]—A land co. was the owner in fee simple of certain land through which a sewerage board, under Public Health Act, 1875 (c. 55), after duly serving on the co. notice of intention to do so, carried a sewer & a rising main. Subsequently an agreement in writing was entered into between the parties regarding what had been done. Differences having arisen regarding the compensation to be paid by the board to the co., recourse was had to arbn. The arbitrator was appointed under Public Health Act, 1875, & before entering on the arbn. made the statutory declaration under that Act. Having considered the disputes he made an alternative award in the form of a special case for the opinion of the ct. If the ct. was of opinion that compensation was to be assessed solely under Public Health Act, 1875, he awarded the co. £5,000; if the arbitration was under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the basis on which compensation was to be awarded was to be governed by the principles in s. 2 of that Act, he awarded the co. £2,148:—*Held :* as the land had been acquired under powers conferred by Public Health Act, 1875, before the agreement between the parties was entered into, it had been acquired compulsorily, & as there was nothing in the agreement which affected the primary basis of the value of the land nor any other matter, including the appointment of the arbitrator expressly under Public Health Act, 1875, which was inconsistent with the rules laid down by s. 2 of the Act of 1919, that Act applied to the arbn., & the co. should be awarded £2,148.—THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD v. THAMES LAND CO., LTD. (1925), 90 J. P. 1; 23 L. G. R. 618.

671. *Add. Annotation :* **Mentd.** Swift v. Board of Trade (1924), 93 L. J. K. B. 529.

672. *Add. Annotation : Generally,* **Mentd.** Prosperity v. Lloyds Bank (1923), 39 T. L. R. 372.

702a. Arbitrator incapable of continuing Power to replace.] Where an arbitrator, appointed by the Reference Committee under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 1, becomes incapable of continuing a particular arbn., the authority of the Reference Committee includes the power to replace him by some one else.—GROSS, SHERWOOD & HEALD, LTD. v. ESSEX COUNTY COUNCIL (1926), 43 T. L. R. 5; 70 Sol. Jo. 1196; 90 J. P. Jo. 617.

715. *Add. Annotation : Generally,* **Mentd.** Samuel v. Dumas, [1924] A. C. 431.

729. *Add. Annotations :*- **Mentd.** S. E. Ry. v. Cooper, [1924] 1 Ch. 211; Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.

PART VI. SECT. 4, SUB-SECT. 1.—B. (a).

566 ii. *Includes all that is necessary for enjoyment of house.*]—The word "house" in Lands Act, 1847, s. 92, is not limited to the four walls of the building, but includes all that is necessary to the convenient occupation of the house.

Promoters of an undertaking:—*Held :* not entitled to take a strip of land immediately in front of a house between it & the wall & containing a tank & fruit trees, when the owner was willing & able to convey the whole of the house.—DRAPER v. SOUTH AUSTRALIAN RAILWAYS COMR. (1901), 3 S. A. L. R. 150.—**AUS.**

PART VII. SECT. 1.

sk. *Public Works Act, s. 22—Acquisition of toll road under Provincial Highways Act, 1917.*]—*Re* CORNWALL & GRAFTON TOLL ROAD CO. (1921), 64 D. L. R. 241; 50 O. L. R. 125.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

sl. *Jurisdiction of Exchequer Court.*]—Property & civil rights being matters within the exclusive powers of the Provincial Legislature, the Exch. Ct. of Canada in ascertaining the estate or interest of persons claiming compensation for property expropriated by the Dominion Crown will have regard to the laws affecting such estate & interest in the province where the property is situated.—R. v. HUDSON'S BAY CO. (1921), 20 Exch. C. R. 413.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.

sl. —— —— *Passing of bye-law by local authority—Submission before bye-law passed ultra vires.*]—KOMMERATH v. RURAL MUNICIPALITY OF EYE HILL, No. 382, (1923) 2 W. W. R. 669.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

sm. *Under Dominion Railway Act, 1919.*]—Where a judge of the Supreme Ct. of Ontario has made an order for possession, under the above Act, with a term that the ry. co. shall pay money into ct. as security, any judge of the Supreme Ct. has jurisdiction to appoint an arbitrator; & under sect. 220 the judge of the county ct. of the county wherein the expropriated lands lie is the proper person to appoint.—*Re* LITTLE & CAMPBELLFORD LAKE ONTARIO & WESTERN RY. CO. (1921), 63 O. L. R. 681.—**CAN.**

762. *Add. Annotation :—As to* (2) **Apprvd. & Apld. Matthey** *v.* **Curling, [1922] 2 A. C. 180.**

766. *Add. Annotation :*—**Mentd. Cayzer, Irvine** *v.* **Board of Trade (1920), 42 T. L. R. 731.**

773a. **Award of lump sum—Validity.**]—Claimant was the owner of certain land with regard to the acquisition of which an arbn. was held under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57). He claimed £17,362, &, before the hearing of the arbn., the President of the Air Council made an unconditional offer of £10,000. The sum awarded to claimant by the official arbitrator *in respect of his interest* in the land & the consequential damage thereto was £11,415. In dealing with the costs the arbitrator directed the Council "to pay £100 towards the costs of claimant." Claimant applied to the ct. by motion for the award to be remitted to the arbitrator on the ground that he had, in making the above order as to costs, not properly exercised the discretion conferred upon him by sect. 5 (4) of the above Act :— *Held :* in awarding the lump sum of £100, the arbitrator had in terms awarded to claimant part of his costs of the arbn. within sect. 5, & as it seemed reasonably clear from the Act that, when a sum was awarded by the arbitrator in excess of the amount offered by the authority but less than the sum which claimant had offered to accept, the arbitrator had an absolute discretion as to the costs, the motion to review the award failed.—BRADSHAW *v.* AIR COUNCIL, [1926] Ch. 329 ; 95 L. J. Ch. 499 ; 135 L. T. 538 ; 42 T. L. R. 197 ; 70 Sol. Jo. 367 ; 24 L. G. R. 351.

894. *Add. Annotation :*—**Mentd. R.** *v.* **Electricity Comrs.,** *Ex p.* **London Electricity Joint Committee Co., [1924] 1 K. B. 171.**

Part VIII.—Entry on Lands by Promoters.

1005. *Add. Annotation :—Generally,* **Mentd. Kennard** *v.* **Cory, [1922] 1 Ch. 265.**

Part IX.—Assessment of Compensation after Entry or Injurious Affection.

1097. *Add. Annotation :—As to* (1) **Reld. Cardiff Corpn.** *v.* **Cook, [1923] 2 Ch. 115.**

Part X.—Conveyance of Land and Payment of Purchase-Money.

1125. *Add. Annotations :—As to* (1) **Reld. Swift** *v.* **Board of Trade (1924), 93 L. J. K. B. 520 ; Swift v. Board of Trade, [1925] A. C. 520.**

PART VII. SECT. 5, SUB-SECT. 8.

736 i. —— *Claim in respect of several interests—Award not apportioning sums between several interests—Insufficient.*]—STEWART MUNICIPAL DISTRICT *v.* BLIESNER, [1924] 2 W. W. R. 1217.—CAN.

ai. — — *Arbitrator not entitled to allow interest.*] *Re* LAKEHEAD & TORONTO CORPN. (1924), 56 O. L. R. 175. CAN.

PART VII. SECT. 5, SUB-SECT. 10.

m (p. 196) i. —— *Under Dominion Railway Act,* 1906 (*c.* 37).]—*Re* KITSILANO INDIAN RESERVE, VANCOUVER HARBOUR COMRS. *v.* R., [1918] 2 W. W. R. 411.—CAN.

m (p. 196) ii. —— *Under Dominion Railway Act,* 1919 (*c.* 68).]—*Re* ARBITRATION UNDER THE RAILWAY ACT, BRITISH COLUMBIA PERMANENT LOAN CO. *v.* CANADIAN NORTHERN RY. CO. (No. 1), [1922] 2 W. W. R. 577 ; 65 D. L. R. 735 ; 15 Sask. L. R. 431.—CAN.

r (p. 196) i. —— *Award determined on wrong principle.*]—Where damages were recoverable by reason of lowering of the sidewalk in front of a building, consisting in the decreased value of the property, but were assessed at the cost of lowering the store floor :—*Held :* the award must be set aside as determined upon a wrong principle.—HARRISON TOWN *v.* AMBON, [1919] 3 W. W. R. 580.—CAN.

x i. ——— ———.]—WINTER *v.* TORONTO (CITY) (1923), 70 D. L. R. 458.—CAN.

y i. —— *Lump sum awarded—Award good on its face.*]—NORTH COWICHAN CORPN. *v.* GORE-LANGTON, [1921] 2 W. W. R. 484.—CAN.

e (p. 197) i. —— ——.]—NASH & WILLIAMS *v.* EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO., [1917] 3 W. W. R. 553 ; 36 D. L. R. 601.—CAN.

e (p. 197) ii. —— ——.]—An appellate ct. should not interfere to vary an award unless it is satisfied that the award does not truly represent the honest opinion of the arbitrators as to damages, or that the basis of valuation was erroneous.—*Re* SCOTT & OSHAWA TOWN, [1922] 52 O. L. R. 504.—CAN.

e (p. 197) i. —— ——.]—*Re* ARBITRATION ACT, *Re* WOODS, [1923] 2 D. L. R. 1000 ; 32 B. C. R. 211 ; [1923] 1 W. W. R. 1344.—CAN.

m (p. 197) i. ——— — —.]—*Re* DIXON & TORONTO CORPN. (1921), 56 O. L. R. 167.—CAN.

e (p. 197) i. —— ——.]—Where a large number of witnesses give evidence to the same effect on a question of value the award of an arbitrator based thereon will not be set aside.—CANADIAN NORTHERN RY. CO. *v.* KETCHESON (1918), 21 Can. Ry. Cas. 104 ; 32 D. L. R. 529.—CAN.

e (p. 197) i. ——— ——— *Question only one of quantum.*]—*Re* LAKEHEAD & TORONTO CORPN. (1924), 56 O. L. R. 175.—CAN.

PART VIII. SECT. 1, SUB-SECT. 1.

an. *Payment or tender of compensation not necessary.*]—CANADIAN PACIFIC RY. CO. *v.* PAUL (1921), 27 Can. Ry. Cas. 417.—CAN.

PART VIII. SECT. 1, SUB-SECT. 2.—A.

ai. —— *Or expropriation proceedings completed.*]—GODDARD *v.* RAINBRIDGE LUMBER CO. (1920), 29 B. C. R. 186.—CAN.

PART VIII. SECT. 2, SUB-SECT. 1.

ao. *Application for warrant of possession — Jurisdiction of Exchequer Court to hear.*]—*Re* EXCHEQUER COURT JURISDICTION, [1925] 4 D. L. R. 673.—CAN.

ap. —— ——.]—CANADIAN NATIONAL RY. *v.* HOLAND, [1925] 4 D. L. R. 703 ; [1925] Exch. C. R. 173.—CAN.

1126. *Add. Annotation :*—Mentd. Swift v. Board of Trade (1924), 93 L. J. K. B. 529.

1158. *Add. Annotation :*—Consd. Berners v. Fleming, [1925] Ch. 264.

1226. *Add. Annotation :*—Mentd. Swift v. Board of Trade (1924), 93 L. J. K. B. 529.

1239. *Add. Annotation :*—Mentd. Swift v. Board of Trade (1924), 93 L. J. K. B. 529.

Part XI.—Application of Money Deposited in Bank.

1500. *Add. Annotation :*—Consd. *Re* Williams' Settlmt., Williams Wynn v. Williams, [1922] 2 Ch. 750.

Part XII.—Costs when Money Deposited—Liability of Promoters.

1597. *Add. Annotations :—Generally*, Mentd. *Re* Letters Patent No. 139207, *Re* Carbonit Akt. [1924] 2 Ch. 53; *Re* Wartling Tithe Redemption, [1924] 2 Ch. 123.

1604. *Add. Annotation :*—Reld. *Re* Letters Patent No. 139207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

1985. *Add. Annotation :*—Mentd. *Re* Child Villiers' Applns., Villiers v. A.-G., [1922] 1 Ch. 394.

1997a. **Transfer of fund from charity trustees to official trustees of charitable funds—Costs to be borne equally by promoters.]**—*Ex p.* Sunbury-on-Thames Urban District Council, *Ex p.* Staines Reservoirs Joint Committee (1922), 86 J. P. Jo. 153.

Part XIII.—Purchase of Particular Interests in Land.

2004. *Add. Annotation :—Generally*, Mentd. Lapish v. Braithwaite (1924), 93 L. J. K. B. 1123.

2037. *Add. Annotation :*—Reld. Cardiff Corpn. v. Cook (1922), 92 L. J. Ch. 177.

2038. *Add. Annotation :*—Apld. Cardiff Corpn. v. Cook, [1923] 2 Ch. 115.

2059. *Add. Citation :* 40 L. J. Q. B. 30.

2067. *Add. Annotation :*—Consd. Matthey v. Curling, [1922] 2 A. C. 180.

2068. *Add. Annotation :*—Reld. Matthey v. Curling, [1922] 2 A. C. 180.

2075. *Add. Annotation :*—Reld. Cardiff Corpn. v. Cook (1922), 92 L. J. Ch. 177.

Part XIV.—Superfluous Lands.

2125. *Add. Annotation : Generally*, Mentd. Richmond v. Savill, [1926] 2 K. B. 530.

2136. *Add. Annotation :*—Reld. Conron v. L. C. C., [1922] 2 Ch. 283.

2141. *Add. Annotations :*—Mentd. Kelly v. Barrett, [1924] 2 Ch. 379; Lord Strathcona S.S. Co. v. Dominion Coal Co. (1925), 42 T. L. R. 86.

2150. *Add. Annotation :—Generally*, Mentd. Conron v. L. C. C., [1922] 2 Ch. 283.

PART X. SECT. 1, SUB-SECT. 4.

p 1. —— *From filing of caveat—Owner remaining in possession.*]—*Re* Arbitration Act, *Re* Rousko & Winnipeg School District No. 1, [1924] 4 D. L. R. 1017; 3 W. W. R. 614.—CAN.

PART XIII. SECT. 5, SUB-SECT. 1.

2044 l. —— *Under invalid lease.*]—Land expropriated by the Dominion Crown was leased for a period of five years under an instrument not registered as required:—*Held:* the unregistered lease did not vest any estate or interest in the lessee & he was not entitled to compensation in respect of the expropriation. R. v. Hudson's Bay Co. (1921), 65 D. L. R. 569; 20 Exch. C. R. 413.—CAN.

PART XIII. SECT. 6, SUB-SECT. 1.

A.

l 1. —— *Entitled to offer As well as owner.*]—R. v. Mewhaven, [1924] Exch. C. R. 218.—CAN.

Part XV.—Compensation for Land taken or used for Special Purposes.

2203a. ——.]—THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD *v.* THAMES LAND CO., LTD., No. 650a, *ante*.

2214. *Add. Annotation :*—**Mentd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177.

2218. *Add. Annotation :*—**Reld.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177.

2222a. Loss of trade & licence & value of trade fixtures not considered.] NORTHWOOD *v.* LONDON COUNTY COUNCIL, [1926] 2 K. B. 411 ; 95 L. J. K. B. 862 ; 135 L. T. 159 ; 90 J. P. 128 ; 42 T. L. R. 508 ; 24 L. G. R. 115, D. C.

2225a. Under Housing, Town Planning, etc., Act, 1919 (c. 35)—Acquisition of land—Extent of powers.]—Under the above Act, defts. made an order, subsequently confirmed by the Minister of Health, for the compulsory acquisition for the purposes of a scheme under sect. 1 of the Act, of three thousand acres for the erection of working-class houses for the accommodation of one hundred & twenty thousand persons. They also proposed to acquire compulsorily a beerhouse within the area with the objects, (*a*) of controlling or regulating the traffic in intoxicating liquor on the site, that control to be based on management by some co. or assocn. whose servants were not to have a pecuniary interest in the sale of alcohol, & (*b*) of providing for the general entertainment & refreshment of the population :—*Held :* the Act contemplated extensive schemes for the provision of working-class houses by local authorities, involving in many cases the acquisition of considerable areas of land & extending even to the creation of a new town ; sect. 12 (1), treated the land within the selected area as a whole, & as something in the nature of a building estate, &, as incidental to the complete control of the development of the building scheme, empowered the local authority to acquire any houses or other buildings, whether the same were or were not required for use as, or as a site for, workmen's dwellings, or for roads or other purposes mentioned in the earlier Housing Acts ; & that power was not limited to houses which it was proposed to adapt for working-class accommodation under the power to alter contained in the later part of the sub-sect. ; upon the above construction of the Act, subject to confirmation by the Minister of Health, defts. had power under sect. 12 (1) of the Act to acquire compulsorily the beerhouse in question for the attainment of the objects above-mentioned.

Semble : both under sect. 12 (2) of the Act, & under Housing of the Working Classes Act, 1903 (c. 39), s. 11, defts. had a similar power for effecting the like objects.—CONRON *v.* LONDON COUNTY COUNCIL, [1922] 2 Ch. 283 ; 91 L. J. Ch. 386 ; 126 L. T. 791 ; 87 J. P. 109 ; 38 T. L. R. 380 ; 20 L. G. R. 131 ; *sub nom.* CONSON *v.* LONDON COUNTY COUNCIL, 66 Sol. Jo. 350.

2249. *Add. Annotation :*—**Mentd.** The Wilhelmina, [1923] P. 112.

2252. *Add. Annotation :*—*As to* (3) **Reld.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2256. *Add. Annotation :*—**Mentd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2271. *Add. Annotation :*—**Mentd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2274. *Add. Annotation :*—**Mentd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2278. *Add. Annotation :*—**Mentd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2286a. Compensation for damage to land by severance not included.]—COURTAULDS, LTD. *v.* CITY OF LONDON CORPN., [1926] 2 K. B. 506 ; 95 L. J. K. B. 972 ; 90 J. P. 161 ; 42 T. L. R. 781 ; 70 Sol. Jo. 1024 ; 24 L. G. R. 538, D. C.

2295. *Add. Annotation :*—**Mentd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

CONFLICT OF LAWS.

Part I.—Principles of Jurisdiction.

1. *Add. Annotation* :—**Refd.** Whitney v. I. R. Comrs. (1925), 42 T. L. R. 58.

11. *Add. Annotation* :—**Refd.** Kramer v. A.-G., [1923] A. C. 528.

12. *Add. Annotation* :—*As to* (1) **Apprvd.** Kramer v. A.-G. (1922), 92 L. J. Ch. 1.

After this case add "Who are foreign nationals within Treaties of Peace & consequent Orders generally, *see* pp. 75–77, *ante*.

13. *Add. Citation* :—2 T. L. R. 116, D. C.

17. *Add. Annotations* :—*As to* (1) **Refd.** The Jupiter (1924), 93 L. J. P. 156; Russian Commercial & Industrial Bank v. Comptoir D'Escompte De Mulhouse (1924), 93 L. J. K. B. 1098. *As to* (2) **Folld.** White, Child & Beney v. Simmons; White, Child & Beney v. Eagle Star & British Dominions Insce. (1922), 127 L. T. 571. **Refd.** Fenton Textile Assocn. v. Krassin (1921), 38 T. L. R. 259; Banque Internationale De Commerce De Petrograd v. Goukassow (1924), 40 T. L. R. 837. *Generally*, **Mentd.** Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

17a. ——— ——— ———.——— Pltfs. were an English limited co. of Part of its business was transacted in R & for the purpose of that business pltfs., their London bankers, deposited Russian Treasury Bonds with the branch of the Banque d took l'Azoff-Don. Having done so, pltfs out two policies of insurance to insure ves against loss or damage to the insured y "directly caused by fire, civil commotions, war, civil war, rev rebellions, military or usurped power. . . ." No claim was to attach under the policy (*inter alia*) "for confiscation or destruction by the Govt. of the country in which the property is situated." In Dec. 1917, during the currency of the policy, the Banque de Commerce was occupied by soldiers & sailors of the Red Guard, & by the Bolshevists, purporting to act under the authority of an executive committee of the Commissaries of the People. They demanded & obtained control & possession of the bank & everything contained in it, including the insured property. Two actions were brought claiming for losses under the policies, & the question arose with regard to the recognition of the Soviet Govt. as a sovereign power: *Held*: on the information then available, the act of the military in seizing the insured property was an act of confiscation by the Govt. of Russia which was in existence at the material time, & had since been recognised by His Majesty's Govt. as the *de facto* Govt. of Russia, & was not an act of a usurped authority; therefore the claim failed by reason of the clause which provided that no claim was to attach under the policy ". . . for confiscation or destruc- by the Govt. of the country in which the property is situated." WHITE, CHILD & BENEY, LTD. v SIMMONS, WHITE, CHILD & BENEY, LTD. v. EAGLE STAR & BRITISH INSURANCE Co. (1922), 127 L. T. T. L. R. 616, C. A.

Part II.—Domicil.

19. *Add. Annotations* :—*As to* (3) **Refd.** *Re* Annesley, Davidson v. Annesley, [1926] Ch. 2. *Generally*, **Refd.** A.-G. for Alberta v. Cook, [1926] A. C. 444. **Mentd.** Eustace v. Eustace, [1924] P. 45.

36. *Add. Annotations* :—*Generally*, **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 441. **Mentd.** Eustace *v.* Eustace, [1924] P. 45.

38. *Add. Annotation* :—**Refd.** Rudd *v.* Rudd, [1924] P. 72.

50. *Add. Annotation* : *As* (1) **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

51. *Add. Annotation* : —*As to* (2) **Refd.** Rudd v. Rudd, [1924] P. 72.

55a. ADD, No.

59. *Add.* *As to* **Refd.** v.

PART II. SECT. 1.

sq. *in province.*] of divorce the a ed in one of of is that parti Dominion Parliament has r. A. C. 444; 93 L. J. P. C. 102, 134 L. T. 717; 42 T. L. R. 317. CAN.

PART II. SECT. 2, SUB-SECT. 1.

40 — domicil of origin was outside of the United States & who has acquired a domicil of choice in one of the states l. resides temporarily in another with the intention of

N. r R. 22, 2 W. W. R. 1. CAN.

PART II. SECT. 3, SUB-SECT. 1.—A.

51 ii. A of origin of this, that is more off. a domicil unless it with perfect there was a domicil. who

I. *Re* MURRAY'S ESTATE, 3 W. W. R. 874; 31 Man. L. R. CAN.

51 iii. A domicil of of choice.—BARNEY v. JAMES (1921), Ti Apr. 29; [1921] 3 W. W. R. 182.— S. AF.

PART II. SECT. 3, SUB-SECT. 1.—B.

60 iii. DROTTIKOP v. GROTH N. Z. L. R. 1.— N.Z.

66. *Add. Annotation :*—**Folld.** *Re* Cunnington, Healing *v.* Webb, [1924] 1 Ch. 68.

68. *Add. Annotation :—As to* (1) **Refd.** Rudd *v.* Rudd, [1924] P. 72.

69. *Add. Annotations :—As to* (1) **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692. *Generally*, **Mentd.** Periak Petroleum Maatschappij *v.* Deen, [1924] 1 K. B. 111.

104. *Add. Annotations :—As to* (1) **Expld.** Graham *v.* Graham, [1923] P. 31. **Refd.** Eustace *v.* Eustace, [1924] P. 45.

115. *Add. Annotations :*—**Refd.** Rudd *v.* Rudd, [1924] P. 72; Bartlett *v.* Bartlett, [1925] A. C. 377; *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

128. *Add. Citation :*—4 Notes of Cases, 698, n.

142. *Add. Annotation :—As to* (2) **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

145. *Add. Annotation :*—**Consd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

214. *Add. Annotation :*—**Refd.** Mitford *v.* Mitford & Von Kuhlmann, [1923] P. 130.

218. *Add. Annotation :—As to* (1) **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

220. *Add. Annotation :—As to* (3) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

221. *Add. Annotation :—As to* (2) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

223. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

225. *Add. Annotation :*—**Expld.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

228. *Add. Annotations :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444. **Refd.** Mitford *v.* Mitford & Von Kuhlmann, [1923] P. 130.

248. *Add. Annotation :*—**Consd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

249. *Add. Annotation :*—**Dbtd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

249a. —— ——.]—The question whether a person is or is not domiciled in a foreign country is to be determined in accordance with the requirements of English law as to domicil, irrespective of the question whether the person in question has or has not acquired a domicil in the foreign country in the eyes of the law of that country.

Where an Englishwoman had never taken the steps prescribed by French Civil Code, art. 13:—*Held:* (1) she had nevertheless on the evidence acquired a French domicil of choice, & the ct. would apply the law of France in administering her estate; (2) on the evidence as to the French law, the French cts. in administering the movable property of deceased would apply French municipal law, & the testamentary disposing power of deceased was governed by that law.—*Re* ANNESLEY, DAVIDSON *v.* ANNESLEY, [1926] Ch. 692; 95 L. J. Ch. 404; 135 L. T. 508; 42 T. L. R. 584.

251a. —— —— ——.]—*Re* ANNESLEY, DAVIDSON *v.* ANNESLEY, No. 249a, *ante*.

265. *Add. Annotation :*—**Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

Part III.—Nature of Property.

290. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

297. *Add. Annotations :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192. **Mentd.** *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

300. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

302. For the paragraph in the original volume substitute the following paragraph :—

—— **Interest in proceeds of sale of English freeholds—By English law.**]—When a person domiciled in a foreign country dies intestate leaving an interest in the proceeds of sale of English freeholds which are subject to a trust for sale but not yet sold, such an interest is an immovable, & the succession thereto is governed by the *lex situs*.—*Re* BERCHTOLD, BERCHTOLD *v.* CAPRON, [1923] 1 Ch. 192; 92 L. J. Ch. 185; 128 L. T. 591; 67 Sol. Jo. 212.

303. For the paragraph in the original volume substitute the paragraph numbered **302** in the original volume.

308. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

309. *Add. Annotation :*—**Consd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

311. *Add. Annotation :*—*Generally*, **Mentd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

PART II. SECT. 3, SUB-SECT. 2.—B. (j).

ar. *Residence in country of origin retained—Residence in another country—Connections with country of origin continued.*]—Re MURRAY'S ESTATE, [1921] 3 W. W. R. 874; 31 Man. L. R. 367.—CAN.

at. —— —— ——.]—DONALD *v.* DONALD, [1922] N. Z. L. R. 237.—N.Z.

PART II. SECT. 3, SUB-SECT. 2.—C.

aw. *Income tax paid in country of choice—Claims for income tax in country of origin successfully resisted.*]—*Held:* facts of great importance in determining question of domicil.—BARRY *v.* JAMES (1921), Times, Apr. 29; [1921] 3 W. W. R. 182.—S. AF.

PART II. SECT. 3, SUB-SECT. 4.

230 z. —— ——.]—BOYLE *v.* BOYLE, [1923] 1 W. W. R. 829.—CAN.

230 zi. ——.]—JONES *v.* JONES (1923), I. L. R. 1 Ran. 765.—IND.

Part IV.—Immovables.

349. *Add. Annotation :*—**Reld.** Hunter *v.* Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493.

368. For "(2) an order giving leave to serve a writ in an action for rescission" read "(2) an order giving leave to serve out of the jurisdiction a writ in an action for rescission."

Add. Citation :—127 L. T. 209.

374. After this case for "**Foreign judgments generally.**]—*See* Part XIV., *post*," read "Foreign judgments generally, *see* pp. 444 *et seq.*, *post*."

380. *Add. Annotations :*—*As to* (1) **Consd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15; Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955.

400. *Add. Annotation :*—**Mentd.** *Re* Jordison, Raine *v.* Jordison, [1922] 1 Ch. 440.

Part V.—Movables.

417a. —— —— ——.]—The Q. Co. was a co. incorporated & carrying on business in Queensland. In Sept. 1886, the Q. Co. issued & deposited with the U. Bank, as security for moneys due & to become due, two debentures, the one for £10,000, & the other for £50,000; both debentures assigned the uncalled capital of the co., & were, as the ct. held, valid according to the law of Queensland. In Dec. 1886 the Q. Co. made a call of £50 a share payable in four instalments, in Feb., Apr., June, & Aug. 1887. The co. had many shareholders domiciled in Scotland & some in England. On Oct. 20, 1887, an order was made for winding up the co. in Queensland, & on June 14, 1888, a similar order was made in England. On Feb. 24, 1887, the A. Co., a co. domiciled in Scotland, commenced proceedings in Scotland to recover from the Q. Co. large sums entrusted to them for investment. Immediately after the institution of the action the call moneys due under the call made by the Q. Co. as above, from shareholders resident in Scotland, were arrested by the Scotch process called arrestment on the dependence of the action. Proceedings in this action were restrained by the High Ct. in England on Feb. 24, 1888, on the motion of the English liquidator of the Q. Co., but the order was expressly made without prejudice to the security, if any, upon the amounts payable by the Scotch shareholders in the Q. Co. which the A. Co. had acquired by their proceedings, & the amounts received from the Scotch shareholders were directed to be carried by the liquidator to a separate account. On Sept. 6, 1889, an order was made in the Queensland winding up allowing the claim of the A. Co. for £12,662 4*s.* 5*d.* The U. Bank, whose claim against the Q. Co. had been allowed for £74,000, but who had valued their security at £31,000, took out a summons claiming that the liquidator should pay over to the bank all the moneys in his hands representing proceeds of the said call. The A. Co. claimed to be paid in priority out of the money received from Scotch shareholders. The evidence stated that, according to the law of Scotland, the arrestment had the effect of attaching the fund in favour of the creditor obtaining it, & upon the decree being pronounced in the suit the security would become complete, & that such an arrestment operated as an assignment of the fund duly intimated; that an admission of the sum due in the winding up of a co. was for this purpose equivalent to a decree; & that, according to the law of Scotland, in order to create a competent security over incorporeal personal property, the assignment thereof must be duly intimated to the debtor:—*Held:* without deciding the point whether the maxim "*Mobilia sequuntur personam*" made the assignment of the calls by the Q. Co. domiciled in Queensland valid in Scotland, the case was governed by the principle that, if a transfer of personal property is carried out validly according to the law of the country where the property is situated, it cannot be made invalid by anything in the law of the assignor's domicil; & as the evidence proved that the arrestment operated as an assignment by the Q. Co., completed by intimation according to the law of Scotland, that assignment could not be made invalid by the prior assignment, which could only have effect by the law of Queensland.—*In re* Queensland Mercantile & Agency Co., *Ex p.* Australasian Investment Co., *Ex p.* Union Bank of Australia, [1892] 1 Ch. 219; 61 L. J. Ch. 145; 66 L. T. 433; 8 T. L. R. 177, C. A.

Annotations :—**Consd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955. **Reld** Kelly *v.* Selwyn, [1905] 2 Ch. 117.

418. *Add. Annotations :*—**Mentd.** *Re* Allester, [1922] 2 Ch. 211; Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

421. *Add. Annotation :*—**Reld.** Sedgwick Collins *v.* Russia Insce. of Petrograd (1925), 133 L. T. 808.

423. *Add. Annotations :*—**Apld.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955. **Reld.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15.

PART IV. SECT. 1, SUB-SECT. 1.

324 l. *Trespass to land—Land situate abroad—Injury by fire spreading into foreign State.*]—Bollard *v.* Abbotsford Lumber Mining & Development Co., [1925] 1 D. L. R. 978; [1925] 1 W. W. R. 474; 34 B. C. R. 485.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.

349 l. —— *Scottish heritage.*]—Testator, domiciled in England, left a will made in England & in English form disposing of his whole estate, which consisted of the most part of real & personal property in England, but also included Scottish heritage:—*Held:* the Scottish cts. had exclusive jurisdiction in an action dealing with competing claims to the Scottish heritage.—Fowler *v.* Fowler's Trustees, [1923] S. C. 212.—SCOT.

Part VI.—Succession.

439. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

439a. —— **Interest in proceeds of sale of English freeholds.**]—*Re* BERCHTOLD, BERCHTOLD *v.* CAPRON, No. 302, *ante*.

440a. —— **Will of Egyptian realty made by British subject domiciled in Egypt – Ottoman Order in Council, 1910, art. 90.**]—A Moslem British subject domiciled in Egypt died in 1918 possessed of property which was all in Egypt. He was survived by his mother, who according to the Moslem law of inheritance was entitled to a one-sixth share of his estate. Deceased executed a will in the English form leaving all his property to his widow & children: *Held:* having regard to the proviso to the above art. testator had no testamentary power over the share of his estate to which his mother was entitled by Moslem law. BARTLETT *v.* BARTLETT, [1925] A. C. 377; 94 L. J. P. C. 100; 133 L. T. 23, P. C.

448. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

460. *Add. Annotation :*—*Generally*, **Mentd.** Ord *v.* Ord, [1923] 2 K. B. 432.

511. For the paragraph in the original volume substitute the following paragraph :—

—— **Share in proceeds of sale of freeholds—Held on trust for sale but not converted.**]—An interest in the proceedings of sale of real estate settled upon a trust for sale, which has not been executed, is personal estate within Wills Act, 1861 (c. 114), s. 1.—*Re* LYNE'S SETTLEMENT TRUSTS, *Re* GIBBS, LYNE *v.* GIBBS, [1919] 1 Ch. 80; 88 L. J. Ch. 1; 120 L. T. 81; 35 T. L. R. 44; 63 Sol. Jo. 53, C. A.

Annotation : **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

521. *Add. Annotation :* **Folld.** *Re* Cunnington, Healing *v.* Webb, [1924] 1 Ch. 68.

526a. — — — — —.]—By his will made in English form in England testator, who described himself as a British subject residing in France, bequeathed to his sole exor., who was English, all his estate upon trust for conversion, & after payment of certain legacies to domestic servants, to divide all the residue of his estate equally between ten named legatees; & if any of such legatees died in his lifetime the legacy was to belong to the issue of such person. Testator died in France, & his will was proved in England. Two of the residuary legatees died in his lifetime, but neither left any issue. There was no realty & the property comprising the residue was in England. The residuary legatees were all English. On a summons the domicil of testator at his death was held to be French. By French law there was no lapse of the shares of those legatees who had died, & the survivors were entitled :—*Held:* the domicil being French & there being no sufficient indication in the will, either express or implied, that testator desired that it should be construed by English law, the *primâ facie* general rule applied, & the will must be construed by French law.—*Re* CUNNINGTON, HEALING *v.* WEBB, [1924] 1 Ch. 68; 93 L. J. Ch. 95; 130 L. T. 308; 68 Sol. Jo. 118.

528. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Manners, Manners *v.* Manners, [1923] 1 Ch. 220.

536. *Add. Annotation :*—**Consd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174.

574. *Add. Annotation :*—**Refd.** *Re* McLaughlin, [1922] P. 235.

590. *Add. Annotation :*—**Consd.** *In the Goods of* Grewe (1922), 127 L. T. 371.

594. *Add. Annotation :* **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

615. *Add. Annotation :*—*As to* (2) **Folld.** *Re* Cunnington, Healing *v.* Webb (1923), 68 Sol. Jo. 118.

621a. — — — — — — — — —.]—Testator gave a share of his residuary estate to trustees upon trust for sale & to stand possessed of the proceeds to pay the income to M. for life & then for such persons as she should by will appoint, & in default of appointment for her children at twenty-one in equal shares. M. married a German in 1880 & died in 1922, leaving two daughters who attained twenty-one. By her will, made in German form, she appointed the elder her heiress, the younger to receive only her legal portion :—*Held:* the will was an effectual exercise of the power.—*Re* STRONG, STRONG *v.* MEISSNER (1925), 95 L. J. Ch. 22; 69 Sol. Jo. 693.

638. *Add. Citation* :—127 L. T. 117.

PART VI. SECT. 2, SUB-SECT. 1.—A.

453 (x. — — —.) Testator who had formerly resided in N.Z. went to Victoria, where according to an affidavit filed by his exor. he acquired & at his death retained a domicil. The bulk of his property was invested in bonds & in mtges. of land in N.Z.—*Held:* the mtges. were movable property, & the intestate succession to them was governed by the law of deceased's domicil.—*Re* O'NEILL, ETC., [1922] N. Z. L. R. 468.—**N.Z.**

453 a. — — —.]—War Stock & National War Bonds are Imperial or British investments, although administered in England, & where testator was domiciled in Scotland :—*Held:* the effect of the destinations fell to be ascertained according to Scots law, & not according to English law.—CUNNINGHAM'S TRUSTEES *v.* CUNNINGHAM, [1924] S. C. 581.—**SCOT.**

PART VI. SECT. 2, SUB-SECT. 3.—D. (b).

ex. "*Heirs*"—*In Canadian will—Whether adopted children included.*]—Where in a will of testator domiciled in British Columbia a gift of personalty is made to a person "or his heirs" & such person dies domiciled in a foreign country before the death of testator, the word "heirs" includes an adopted child, where under the law of that country the effect of adoption is to confer on an adopted child all the rights & status of a child born in lawful wedlock.—PURCELL *v.* HENDRICKS & MARKS, (B.C.), [1925] 3 D. L. R. 854; [1925] 2 W. W. R. 689.—**CAN.**

Part VII.—Contracts.

639a. ——.]—Pltf. was received by defts., a British co., under a contract made in Detroit, to be carried in one of their steamships from New York to Southampton. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. It was further provided that all questions arising under the clause should be decided according to English law. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:—*Held:* the language of the contract showed that it was the intention of the parties that it should be wholly governed by English law; the clause relieving defts. from liability for the negligence of their servants, though void by the law in force in Detroit, was valid & enforceable, by English law, but, applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury. —Jones v. Oceanic Steam Navigation Co., Ltd., [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

640. *Add. Annotation:* **Apld.** Pass v. British Tobacco Co. (Australia) (1926), 12 T. L. R. 771.

641. *Add. Annotation:—Generally*, **Mentd.** Matthey v. Curling, [1922] 2 A. C. 180.

643. *Add. Annotations:*—**Refd.** Jones v. Oceanic Steam Navigation Co., [1924] 2 K. B. 730. **Mentd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167.

644. *Add. Annotation: As to* (2) **Refd.** Cayzer, Irvine v. Board of Trade (1926), 95 L. J. K. B. 1051.

646. *Add. Annotation:*—**Apld.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730.

(c) *Application of Lex loci solutionis* (Vol. XI., p. 392).

Before 659 add as follows:—

658a. General rule.]—Where a contract made in one country is to be performed in another, the law governing the contract is the law of the country where the performance is to take place.

A contract for the sale of goods, made in Malta, was to be performed by the delivery of the goods on board a ship at Gibraltar selected by the purchaser:—*Held:* as from the moment of such delivery, the vendor had no further control over the goods, & had parted with their possession of & property in them, & the purchaser had, after their arrival in Malta, dealt with them in a manner inconsistent with the ownership of the vendor, he had no right to reject the goods & rescind the contract, which was governed by the law of Gibraltar.—Benaim & Co. v. Debono, [1924] A. C. 514; 93 L. J. P. C. 133; 131 L. T. 1, P. C.

676. *Add. Annotation:*—**Refd.** Russian Commercial & Industrial Bank v. Comptoir D'Escompte de Mulhouse, [1923] 2 K. B. 630.

683. *Add. Annotation:*—**Refd.** The Colorado, [1923] P. 102.

688. *Add. Annotations:*—**Refd.** Benaim v. Debono, [1924] A. C. 514. **Mentd.** Matthey v. Curling, [1922] 2 A. C. 180.

699. *Add. Annotations:*—**Consd.** Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172. **Apld.** Russell v. Timber Operators & Contractors (1926), 95 L. J. K. B. 589.

703a. — — — — **Policy effected in England by foreigner—With foreign company through English office.**]—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe, were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable, & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law: *Held:* it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable; applying that test in the present case, the debts were recoverable in London where they were expressed to be payable.—New York Life Insurance Co. v. Public Trustee, [1924] 2 Ch. 101; 93 L. J. Ch. 440; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

Annotation: **Refd.** Swedish Central Ry. v. Thompson, [1924] 2 K. B. 255.

PART VII. SECT. 2, SUB-SECT. 1.—B. (b).

652 vi. —— *Assessment of damages.*]—Damages recoverable in an action for breach of contract made abroad will be determined by the proper law of the contract, that is to say, the law which the parties intended should govern their rights & liabilities.—Hobbit v. Livesley, [1924] 2 D. L. R. 1002; [1924] 2 W. W. R. 443; 34 B. C. R. 19; *affd.*, [1925] 1 D. L. R. 159. CAN.

652 vii. — —.]—Lucas & Co. v. Moncton Supply Co., [1924] 4 D. L. R. 376. CAN.

PART VII. SECT. 2, SUB-SECT. 1.—B. (c).

m. Read now "658a i."

705. *Add. Annotation:—As to* (1) **Refd.** The Colorado, [1923] P. 102.

711. *Add. Annotation:—As to* (1) **Refd.** The Colorado, [1923] P. 102.

716. *Citations:*—For "5 De G. M. & G. 604" read "1 De G. M. & G. 604."

Add. Annotations:—**Mentd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co. (1925), 42 T. L. R. 86; Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609.

719. *Add. Annotation:*—**Refd.** The Colorado, [1923] P. 102.

740. *Add. Annotation:—As to* (2) **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

748. *Add. Annotation:—Generally*, **Mentd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

757. *Add. Annotation:—As to* (1) **Apld.** Swiss Bank Corpn. *v.* Boehmische Industrial Bank, [1923] 1 K. B. 673.

Part VIII.—Torts.

777. *Add. Annotation:*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

783. *Add. Annotations:—Generally*, **Mentd.** McMillan *v.* Canadian Northern Ry., [1923] A. C. 120; Walpole *v.* Canadian Northern Ry., [1923] A. C. 113.

796. *Add. Annotation:—As to* (2) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

Part IX.—Marriage.

806. *Add. Annotation:—As to* (3) **Refd.** Mitford *v.* Mitford, [1923] P. 130.

821. *Add. Annotation:* **Mentd.** *Re* Wombwell's Settlt., Clerke *v.* Menzies, [1922] 2 Ch. 298.

827. *Add. Annotation:—As to* (2) **Refd.** Mitford *v.* Mitford, [1923] P. 130.

836. *Add. Annotation:*—**Folld.** Mitford *v.* Mitford, [1923] P. 130.

853. *Add. Annotation:*—**Mentd.** Perlak Petroleum Maatschappij *v.* Deen, [1924] 1 K. B. 111.

Part X.—Divorce and other Matrimonial Causes.

878. *Add. Annotation:*—**Mentd.** Rudd *v.* Rudd, [1924] P. 72.

884. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 111.

PART VII. SECT. 2, SUB-SECT. 8.

756 i. *By act of parties—Payment—In what currency.*]—KIMKA *v.* BORDER CITIES IMPROVEMENT CO. (1922), 52 O. L. R. 103. **CAN.**

756 ii. ——.] MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

756 iii. ——.]—Where a payment originating in one country is to be made in another country, & the currency denomination specified is the same in both countries, the rule is that the payment must be made in the currency of the country where the money is payable, unless by express terms or necessary implication payment in some other currency is required.—SIMMS *v.* CHERNENKOFF, [1922] 1 W. W. R. 967; 62 D. L. R. 703; 15 Sask. L. R. 155. **CAN.**

PART VIII. SECT. 1.

775 xii. ——.]—Appellant, resident in Ontario, in the course of his employment was injured in that province owing to the negligence of a fellow servant. He sued for damages in Saskatchewan, in which province common employment was not a defence, although a defence to an action in Ontario:—*Held:* the action could not be maintained.—MCMILLAN *v.* CANADIAN NORTHERN RY. CO., [1923] A. C. 120; 92 L. J. P. C. 44; 128 L. T. 293; 39 T. L. R. 14.—**CAN.**

775 xiii. ——.]—An application under K. B. Act, 1920 (Sask.), for leave to bring an action for damages for personal injuries incurred in the province of Alberta in the course of plff.'s employment was refused, on the ground that the acts complained of were not "unjustifiable" according to Alberta law, & an essential condition to found the action was not fulfilled.—WARD *v.* BRITISH AMERICAN OIL CO., LTD., [1923] 1 W. W. R. 1210; 16 Sask. L. R. 526. **CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

780 i. *Trespass to person—Damages—Granting of compensation entrusted to special tribunal in country where tort committed.*]—Since in B. C. the board appointed under Workmen's Compensation Act has exclusive jurisdiction in matters of compensation in lieu of all rights of action of a workman or his dependents against his employer for any accident arising out of & in the course of his employment, no action can lie in Saskatchewan on behalf of a widow & child of a workman for his death while domiciled in B. C.—WALPOLE *v.* CANADIAN NORTHERN RY. CO., [1923] A. C. 113; 92 L. J. P. C. 39; 128 L. T. 289; 39 T. L. R. 16. **CAN.**

b. For "*Trespass — Negligence — Common employment—Lex loci actus*" read "—— *Negligence—Common employment—Lex loci actus.*"

f. After this case add "**See, also, No. 775 xii., *ante.***"

PART IX. SECT. 1, SUB-SECT. 1.

811 i. ——*Marriage solemnised according to law of state.*]—If a person domiciled in a country whose laws permit polygamous marriages is, in accordance with its laws, married there to two wives, citizens of that country, & dies while still domiciled there though temporarily residing in B. C., the status of the wives will be recognised by the cts. of B. C. for the purpose of fixing the succession duty payable on movable property in B. C. going under deceased's will to each of the wives.—YEW *v.* A.-G. FOR BRITISH COLUMBIA, [1924] 1 D. L. R. 1166; 1 W. W. R. 753; 33 B. C. R. 109; *revsg.* S. C. *sub nom. Re* LEE CHEONG, [1923] 1 W. W. R. 867.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—C.

827 ii. ——.] In 1911 H., domiciled in the Transvaal, married his deceased wife's sister, W., who was domiciled in Natal. By the common law prevailing in T. at the time, marriage between a man & his deceased wife's sister was prohibited. In N. such a marriage was permitted by statute:—*Held:* the marriage was valid inasmuch as the domicil of W. was in N. & the marriage was celebrated in N., & the N. cts. would not regard the validity of the marriage as affected by an incapacity imposed by the law of the husband's domicil not recognised by the law of N.—FRIEDMAN *v.* FRIEDMAN'S EXECUTORS (1922), 43 N. L. R. 259.—**S. AF.**

PART X. SECT. 1, SUB-SECT. 2.—A. (a).

873 i. —— *Indian marriage.*]—Petition by the wife for dissolution of marriage. The husband

885. *Add. Annotations :*—**Consd.** A.-G. for Alberta v. Cook, [1926] A. C. 444. **Refd.** Graham v. Graham (1923), 128 L. T. 639; Eustace v. Eustace [1924] P. 45; Rudd v. Rudd, [1924] P. 72; Sasson v. Sasson, A. C. 1007.

891. *Add. Annotation :*— **Mentd.** Bosworthick v. Bosworthick, [1926] P. 150.

894. *Add. Annotations :*—**Consd.** Graham v. Graham, [1923] P. 31. **Refd.** Mitford v. Mitford, [1923] P. 130.

895. *Add. Annotations :*—*As to* (1) **Refd.** Graham v. Graham, [1923] P. 31; Eustace v. E [1924] P. 45. *Generally*, **Mentd.** A.-G. for Alberta v. Cook (1926), 134 L. T. 717.

899a. —— —— ——.]—A decree for judicial separation made under Matrimonial Causes Act, 1857 (c. 75), s. 16, does not enable the wife to acquire a domicil different from that of her husband, & thus entitle her to sue for a divorce in a ct. other than that of the husband's domicil. The effect of sect 25 of the above Act upon the legal r of the spouses after a decree for judicial separation is confined within the precise terms of those sects. A.-G. FOR ALBERTA v. COOK, [1926] A. C. 444; 95 L. J. P. C. 134 L. T. 717; 42 T. L. R. 317, P. C.

903a. —— —— ——.]—(1) The burden of proving a change of the domicil of origin is strongly on those alleging it.

(2) In this case resp. had not been proved to have acquired at the material time an American domicil, so the American ct., which had granted him a decree of divorce, had no jurisdiction.

(3) Even if the American ct. had diction petitioner would have not have been bound by proceedings, of which she had no notice or k.

(4) *Semble :* even if resp. has now acquired an American domicil, petitioner can still a deserted wife obtain relief from the sh cts.—RUDD v. RUDD, [1924] P. 72; L. J. P. 45; 130 L. T. 575; 40 T. L. R. 197.

905. *Add. Annotation :* **Consd.** A.-G. for Alberta v. Cook, [1926] A. C. 444.

906. ; - **Consd.** A.-G. for v. A. C. 444.

916. *Annotation :*—**Refd.** Graham v. Graham, P. 3

917. *Add. Annotations :*—**Consd.** A.-G. for Alberta v. Cook, [1926] A. C. 444. **Refd.** Graham v. Graham, [1923] P. 31.

918. *Add. Annotations :*—**Distd.** Eustace v. Eustace, [1924] P. 45. **Refd.** Graham v. Graham, [1923] P. 31; Mitford v. Mitford, P. 130.

918a. ——.]—It is established by the c of *Armytage* v. *Armytage*, No. 917, & *Anghinelli* v. *Anghinelli*, No. 918, that, according to the practice of the ecclesiastical cts., a suit for judicial separation, which is now substituted for the divorce *a mensa et thoro*, can be entertained in a case where both parties are resident but not domiciled within the jurisdiction. But the ct. has no jurisdiction to maintain a suit against a resp. who at the time of his citation or of the institution of the suit is resident out of the jurisdiction. Statute of Citations, 1531 (c. 9, s. 2, which forbade the ecclesiastical cts. to cite any person out of the diocese where he was inhabiting or dwelling, must be taken to have limited the jurisdiction & not only the power of service of the ecclesiastical cts.; & Matrimonial Causes Act, 1857 (c. 85), which permits service within or without His Majesty's Dominions, cannot extend the jurisdiction.—GRAHAM v. GRAHAM, [1923] P. 31; 92 L. J. P. 26; 128 L. T. 639; 39 T. L. R. 139; 67 Sol. Jo. 316.

Annotations :—**Distd.** Eustace v. Eustace, [1924] P. 45. **Mentd.** Smith v. Smith, [1923] P. 128.

918b. —— **Respondent domiciled in England.**]—There is jurisdiction in the Probate, Divorce & Admlty. Div. to decree judicial separation at the suit of the wife where the husband is domiciled in England, although at the date of the institution of the suit he is not r in the country. EUSTACE v. EUSTACE P. 45; 93 L. J. P. 28; 130 L. T. 79; 3 T. L. R. 687; 67 Sol. Jo. 807, C. A.

a subject of the U.S.A. & in that country: the in India until Jan. 1923, when the band left for America wher remained. Adultery & cruelty re committed within the of the ct. sufficient to o to a decree n jurisdiction to pass MILLER v. MILLER (1924), I. L. R. 52 Calc. 366.—IND.

879 iv. —— —— ——.)—The l of the of their , & ct. the ly domiciled in country to undo a other such a divorce will be cts. of Ontario, even if granted for a cause which would not be sufficient to obtain a divorce in Ontario.—CROMARTY v. CROMARTY (1917), 35 O. L. R. 481; 33 D. L. R. 151.—CAN.

890 iv. —— ——.)—An action by a who had been married in in a foreign State for a divorce resulted in favour of the wife, & the marriage was to , & by it she was awarded by action to recover the

of an had to had invoked & submitted to the of the foreig if from of (1898), 31 O. 321. CAN.

PART X. SECT. 1, SUB-SECT. 2. A. (b).

11. —— *Must be within limits of province.*]—The domicil jurisdiction to must b of the d to. v. MARRIAGE, (1923) 3 W. W. R. ; 4 D. L. R. 403.—CAN.

wife of ion, of

N. Z. L. R. 273.

903 iv a. — of in of of the wife; but circumstances may arise, as a result of that rule, which will to a deserted wife fr

her marriage lie. PAYN v. PAY (1924), 3 D. L. R. 1096; 3 W. W. R. 111. CAN.

PART X. SECT. 1, SUB-SECT. 3.

1. .)—Where a wife of of

ct. in Scotland has jurisdiction to

domicil in a v. RAMSAY, SCOT.

PART X. SECT. 1, SUB-SECT. 4.

11. — —.) On petition by a of conjugal rights il. & the ct. lief. It i was or

I. R. IR.

PART X. SECT. 1, SUB-SECT. 5.

o l. — *Re*

nullity

926. *Add. Annotations :*—**N.F.** Graham *v.* Graham, [1923] P. 31. **Reld.** Mitford *v.* Mitford, [1923] P. 130.

930. *Add. Annotation :*—**Reld.** Rudd *v.* Rudd, [1924] P. 72.

935. *Add. Annotations :*—*As to* (1) **Folld.** Mitford *v.* Mitford (1923), 92 L. J. P. 90. *As to* (3) **Reld.** Eustace *v.* Eustace, [1924] P. 45.

935a. —— —— ——.]—RUDD *v.* RUDD, No. 903a, *ante*.

944. *Add. Annotation :*—**Reld.** Mitford *v.* Mitford, [1923] P. 130.

944a. ——.]—The husband, of British nationality & domicil, married a woman of German nationality & domicil in Berlin in accordance with German law on Jan. 5, 1914. On Oct. 23, 1914, a German ct. annulled the marriage under a provision of the German Civil Code, & this decree of nullity was upheld on appeal. On Mar. 4, 1920, the woman, resp. in the present suit, contracted in Germany a second marriage, in respect of which the first husband, the present petitioner, claimed relief :—*Held :* the German decision was a conclusive adjudication between the parties, & no marriage was at the commencement of the suit or now subsisting.—MITFORD *v.* MITFORD & VON KUHLMANN, [1923] P. 130 ; 92 L. J. P. 90 ; 129 L. T. 153 ; 39 T. L. R. 350.

952. *Add. Annotations :*—**Reld.** Mitford *v.* Mitford, [1923] P. 130 ; Rudd *v.* Rudd, [1924] P. 72.

Part XII.—Assignment of Property on Marriage.

966. *Add. Annotation :*—**Reld.** Rudd *v.* Rudd, [1924] P. 72.

969. *Add. Annotation :*—*As to* (2) **Reld.** Banque Internationale de Commerce de Petrograd *v.* Goukassow, [1923] 2 K. B. 682.

1010. *Add. Annotation :*—**Mentd.** Webster *v.* Webster & Williamson, [1926] P. 198.

Part XIV.—Foreign Judgments.

1033. For "No. 383, *ante*," read "No. 454, *ante*."

1045. *Add. Annotation :*—**Mentd.** The Sylvan Arrow (1922), 128 L. T. 448.

1052. *Add. Annotation :*—**Reld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1054. *Add. Annotation :*—**Apld.** Rudd *v.* Rudd, [1924] P. 72.

1069. *Add. Annotation :*—**Reld.** The Joannis Vatis (No. 2), [1922] P. 213.

1073. *Add. Annotation :*—*As to* (1) **Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1080. *Add. Citation :*—[1921] B. & C. R. 195.

1090a. ——.]—RUDD *v.* RUDD, No. 903a, *ante*.

actions, such residence must be *bona fide*. Where a petition setting up grounds for a declaration of nullity was erroneously dismissed, the ct. declined to reinstate the petition, as petitioner was merely a casual visitor, although his wife was a resident, in British Columbia.—PURDY *v.* PURDY, [1919] 2 W. W. R. 551.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.—A.

927 v. ——.]—As the domicil of a wife is the husband's domicil & foreign proceedings cannot affect the legal status of a marriage in Canada, where the grounds supporting a foreign decree would not support a decree under Canadian law :—*Held :* a wife's divorce & re-marriage in Minnesota constituted legal adultery, & furnished ground for the husband's claim for dissolution of the Canadian marriage.—CAMPBELL *v.* CAMPBELL, [1921] 2 W. W. R. 849.—**CAN.**

927 vi. ——.]—Where a husband had left Manitoba for the purpose of obtaining a divorce which he could not have obtained there, & had obtained a divorce abroad & married again :—*Held :* the wife's prayer for divorce should be granted.—YATES *v.* YATES, [1924] 4 D. L. R. 835 ; 3 W. W. R. 578.—**CAN.**

926 ii. ——.]—CROMARTY *v.* CROMARTY, No. 879 iv., *ante*.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.—B.

944 ii. ——.]—A domiciled Scotswoman went through a ceremony of marriage in Paris, in 1897, with an Austrian subject who was domiciled in Austria. Thereafter the parties became domiciled in Germany at Wiesbaden, & lived together there till 1924, except during the period from 1914 to 1918 when the husband served in the Austrian army & the wife resided in Switzerland. In 1924 the wife brought an action in the German cts. at Wiesbaden for declarator of the marriage, on the grounds that certain certificates furnished by the husband to the registrar in Paris at the time of the marriage were false, & that neither of the parties had the necessary residential qualification in France to render the marriage valid ; & decree of nullity was granted by the German ct. :—*Held :* the decree of nullity was not a decree *in rem*, & was not necessarily conclusive, in an action in the Scottish cts. at the instance of a third party, of the question whether the spouses were legally married.—ADMINISTRATOR OF AUSTRIAN PROPERTY *v.* VON LORANG, [1926] S. C. 593.—**SCOT.**

PART X. SECT. 2, SUB-SECT. 2.

947 iii. ——.]—CROMARTY *v.* CROMARTY, No. 879 iv., *ante*.—**CAN.**

PART X. SECT. 2, SUB-SECT. 3.

xa. *Presumption in favour of validity of proceedings.*]—FIELDS *v.* FIELDS, [1923] 2 D. L. R. 256 ; 53 N. S. R. 65.—**CAN.**

952 ii. ——.]—OWEN *v.* ROBINSON (OTHERWISE OWEN), [1925] N. Z. L. R. 591.—**N.Z.**

PART XIII. SECT. 2.

r. After this case add "*Compare* No. 1117 i., *post*."

PART XIV. SECT. 2, SUB-SECT. 2.—A.

1034 iii. ——.]—Where a suit is brought on a foreign judgment, it is not open to deft. to plead that the ct. which passed the judgment had no jurisdiction to do so, when he himself had submitted to the jurisdiction & had not challenged it.—GANGA PRASAD *v.* GANESHI LAL (1923), I. L. R. 46 All. 119.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—C.

1054 xiv. —— ——.]—A judgment on an award obtained in England by default cannot be sued on in India, since it is not a judgment "on the merits" within Code of Civil Procedure (Act V. of 1908), s. 13.—OPPENHEIM & Co. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482 ; 91 L. J. P. C. 205 ; 127 L. T. 196 ; 49 L. R. Ind. App. 174.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—F.

1 i. —— *Execution of power of attorney—Authorising agent to appear as plaintiff or defendant—Failure of agent to appear.*]—JANOO HASRAN SAIT *v.* MAHAMAD OBUTHU (1924), I. L. R. 47 Mad. 577.—**IND.**

1108. *Add. Annotation :*—**Apld.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1112. *Add. Annotation :*—**Consd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1113. *Add. Annotation :*—**Consd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1113a. Judgment for payment of sum of money—Amount not subject to variation—Alimony.] —By the law of the State of New York, where a judgment has been pronounced by the proper ct. of that State for the payment of alimony, & instalments under that judgment are due & in arrear, it is not competent for that ct. to vary its judgment in respect of the instalments so accrued due :—*Held :* such a judgment is in that respect a final judgment & an action may be brought to enforce payment of those arrears in this country.—BEATTY *v.* BEATTY, [1924] 1 K. B. 807 ; 93 L. J. K. B. 750 ; 131 L. T. 226, C. A.

1114. *Add. Annotation :*—**Reld.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1170. *Add. Annotation :* **Reld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1237. *Add. Annotation :* **Mentd.** Ord *v.* Ord, [1923] 2 K. B. 432.

1241. After the last cross-reference following this case add " —— **Maintenance order made in Dominion—Under Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).]**—*See* HUSBAND & WIFE, No. 6233a."

1243a. —— Since constitution of Irish Free State.] —Judgments Extension Act, 1868 (c. 54), ceased to operate in Southern Ireland on Dec. 5, 1922.—WAKELY *v.* TRIUMPH CYCLE CO., [1924] 1 K. B. 214 ; 93 L. J. K. B. 331 ; 130 L. T. 269 ; 40 T. L. R. 15 ; 68 Sol. Jo. 117, C. A.

Annotation :—**Folld.** Banfield *v.* Chester (1925), 94 L. J. K. B. 805.

1243b. —— ——.]—Judgments Extension Act, 1868 (c. 54), has, since Dec. 5, 1922, ceased to apply to the Irish Free State. A certificate of an English judgment can, therefore, no longer be issued under Judgments Extension Act, 1868, s. 1, for registration in the Irish Free State cts.

Semble : such certificate will be registered in the Irish Free State cts., but the application to the English ct. should be for a certificate of the judgment *simpliciter* under R. S. C., Ord. 61, r. 7, & not supported by an affidavit having reference to Judgments Extension Act, 1868. BANFIELD *v.* CHESTER (1925), 94 L. J. K. B. 805 ; 133 L. T. 623 ; 41 T. L. R. 563 ; 69 Sol. Jo. 692, C. A.

PART XIV. SECT. 2, SUB-SECT. 3.

p 1. —— *Presumption of finality.*] —The finality & conclusiveness of a foreign judgment will be presumed in favour of a pltf. relying on it, unless it is put in issue by deft.'s pleadings, but a Ct. of Appeal in ordering a new trial can allow such amendments to be made as will enable deft. to raise the issue.—SMITH *v.* SMITH, [1923] 2 D. L. R. 896 ; 2 W. W. R. 389.—**CAN.**

1113 ii. ——.]—Where there did not appear to be any difference proved between the effect in the foreign State & in Ontario of such a judgment :—*Held :* a decree for alimony not being an absolute judgment, pltf. was not entitled to recover upon the foreign judgment in respect of arrears of alimony.—MAGUIRE *v.* MAGUIRE (1921), 64 D. L. R. 180 ; 50 O. L. R. 100.—**CAN.**

1113 iii. ——.]—PERRY *v.* PERRY, [1924] 4 D. L. R. 1177 ; 54 O. L. R. 613 ; *revsg.*, [1924] 1 D. L. R. 665 ; 53 O. L. R. 502.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 5.

1117 i. *Orders in respect of foreign infant—Custody.]*—The ct. will give effect to the judgment of the ct. of a foreign State awarding the custody of an infant to one of the parents.—*Re* AYERS, [1921] 2 W. W. R. 171 ; *affd.*, [1921] 2 W. W. R. 625.—**CAN.**

1117 ii. —— *Appointment of guardian.]*—Where a child, whose parents had died, was removed from the province of its domicil of origin, its maternal grandfather, resident in that province, obtained from the cts. of that province letters of guardianship of the child & thereafter applied to the cts. of the province to which the child had been removed for a writ of *habeas corpus*. The application was granted on the ground that, other things being equal, the cts. of one province will recognise the proceedings of the cts. of another province in such a case.—*Re* BERGMAN & WALDRON, *Re* INFANTS ACT, [1923] 4 D. L. R. 56 ; 3 W. W. R. 70.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 8.

1140 i. *What amounts to repugnancy to "natural justice"—Not merely following lex fori—Lex fori different from law in force in British India.]*—GANGA PRASAD *v.* GANESHI LAL (1923), 1 L. R. 46 All. 119.—**IND.**

PART XIV. SECT. 3, SUB-SECT. 1.—A.

1155 iii. ——.]—In an action in Manitoba upon a foreign judgment the fact that defences have been raised & tried in the foreign ct. does not prevent their being raised & tried again, but there is a discretion in the ct. to allow the defences or to strike them out on the ground of embarrassment or delay ; the fact that the case has been tried out in a foreign ct., that an unsuccessful appeal has been taken, or that a consent judgment has been entered will have a very strong bearing, but in each case the discretion must be exercised upon the merits of that case alone.—CALLAGHAN *v.* NICHOLLS, [1921] 3 W. W. R. 476 ; 31 Man. L. R. 331.—**CAN.**

1167 v. ——.]—The ct. will not entertain defences in an action on a foreign judgment that should have been raised in the foreign ct. or which might properly have been made the subject of appeal in the foreign jurisdiction.—HUTTON *v.* DENT (1922), 70 D. L. R. 582.—**CAN.**

PART XIV. SECT. 3, SUB-SECT. 2.—A.

1189 i. *What is foreign judgment in rem—Adjudication on distribution of personal estate.]*—Where a ct. of the country of domicil adjudicates upon the distribution of personal property that adjudication is binding upon all the world & is not subject to review in the cts. of another country.

It is for the ct. of the domicil to determine whether its own proceedings are in *rem* or merely in *personam*, & when that ct. determines that its proceedings are in *rem* all foreign cts. must so treat the proceedings, although they would not be so recognised by the law of the country where the judgment is set up.—JONES *v.* SMITH, [1925] 2 D. L. R. 790 ; 56 O. L. R. 550.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 1.

1215 iv. ——.]—*Re* HAMAR, *Ex p.* McGIBBETT & Co. (1921), 63 D. L. R. 241 ; 3 C. B. R. 137.—**CAN.**

1215 v. ——.]—MARSHALL *v.* HOUGHTON, [1923] 2 W. W. R. 553 ; 33 Man. L. R. 166.—**CAN.**

PART XIV. SECT. 5.

1233 iii. ——.]—While her husband, who had deserted her, was domiciled in Alberta, pltf. obtained against him in Colorado, where they had formerly lived, a judgment in the nature of a decree of judicial separation & alimony. She sued in Alberta on that judgment, but abandoned that claim & asked for relief under an alternative claim for alimony :—*Held :* she was not estopped by the foreign judgment, & alimony granted.—DERRO *v.* DERRO, [1922] 3 W. W. R. 690 ; 70 D. L. R. 61.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.—A.

1243a i. *To what judgments Act applicable Since constitution of Irish Free State.]*—The certificate of an English judgment may be registered under Judgments Extension Act, 1868 (c. 54), in the Irish Free State.—GREENE *v.* O'CONOR, [1924] 2 I. R. 182.—**IR.**

PART XIV. SECT. 7, SUB-SECT. 2.

sb. *By registration of English High Court judgment—No submission to jurisdiction.]*—In a suit for divorce in the Divorce Div. of the High Ct. of Justice in England, an appearance was entered by London agents, on behalf of a co-respondent residing in New Zealand, in error & without any instructions to that effect. On an application to have the judgment for costs of the High Ct. registered in the Supreme Ct. so that it might be enforced in New Zealand :—*Held :* (1) co-respondent did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that ct. ; (2) even if such entry of appearance did amount to submitting to the High Ct.'s jurisdiction, it would not be just & convenient for the judgment to be enforced in New Zealand.—REDMAN *v.* REDMAN & CHAPMAN, [1926] N. Z. L. R. 131.—**N.Z.**

PART XIV. SECT. 8.

1254 i. *Authentication by seal of court (or signature of judge.]*—To

Part XVI.—Practice and Procedure.

1272a. —— Not payment under garnishee order in England.]—SWISS BANK CORPN. *v.* BOEHMISCHE INDUSTRIAL BANK, No. 1307a, *post*.

1277. *Add. Annotation.*]—**Mentd.** The Wilhelmina, [1923] P. 112.

1307. *Add. Annotations:*—**Distd.** Swiss Bank Corpn. *v.* Boehmische Industrial Bank, [1923] 1 K. B. 673. **Consd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808.

1307a. Garnishee proceedings — Payment of debt situate in England—Recognised by international law.]—Judgment having been recovered against a foreign corpn., who submitted to the jurisdiction, a garnishee summons was issued to attach a debt due from a London bank to the foreign corpn.:—*Held:* the judgment creditors were entitled to have an order *nisi* made absolute, inasmuch as payment under a garnishee order operated as a discharge of the amount paid & was recognised by international law as having that effect, & consequently there was no real risk of the garnishees being obliged to pay the debt over again to the foreign corpn., & there was, therefore, nothing inequitable in making the order absolute.

The debt in this case is situate in England, & is discharged in whole or in part by payment under a garnishee order in England, which is not mere procedure & is recognised in international law (BANKES, L.J.).—SWISS BANK CORPN. *v.* BOEHMISCHE INDUSTRIAL BANK, [1923] 1 K. B. 673; 92 L. J. K. B. 600; 128 L. T. 809; 39 T. L. R. 179; 67 Sol. Jo. 423, C. A.

Annotation:—**Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1307b. ——.] Defts., a co. incorporated in Russia, had a branch office in London, & had registered C. as their agent to accept service of any judicial process that might be issued against them. In 1918 defts.' business & its assets were by revolutionary legislation transferred to the Soviet Govt. In 1923 an action was brought in England to recover a debt alleged to be due from defts. to pltfs., the writ being served on C., & in default of appearance judgment was signed against defts. Pltfs. having obtained a garnishee order *nisi* to attach a debt due to defts. from third parties in England:—*Held:* as the debt owing from the garnishees to defts. was governed by English law, payment by the garnishees of the amount of the judgment debt would be a discharge *pro tanto* of the debt due from them to defts., & it must be assumed that the Soviet Govt. would follow the ordinary rules of international comity & admit the validity of that payment, & the garnishee order ought to be made absolute.—SEDGWICK COLLINS & CO. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 663, C. A.; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK COLLINS & CO., [1927] A. C. 95, H. L.

1309a. —— Rights of mortgagee of ship under French hypothèque—Claim for necessaries.]—According to French law, the mtgee. of a ship under a French *hypothèque*, although he has not the same right of property as that given by Merchant Shipping Act, 1894 (c.60), in respect of an English mtge., has a right to arrest the ship in the hands of a subsequent owner. His claim, however, is postponed to that of a necessaries man.

On a motion to determine priorities between English claimants, in respect of necessary repairs effected upon a French ship & claimants under a French *hypothèque* upon the ship:—*Held:* as the rights under the *hypothèque* must be determined according to French law, which gave greater rights than those given by English law to a necessaries man who had merely the right to sue *in rem*, the claim of the necessaries men, according to the *lex fori* by which the question of priorities must be determined, was postponed to the claim of the mtgees.—THE COLORADO, [1923] P. 102; 92 L. J. P. 100; 128 L. T. 759; 16 Asp. M. L. C. 145, C. A.

1328. *Add. Annotation:*—**Consd.** The Golaa, [1926] P. 103.

1340. *Add. Annotations:*—**Mentd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255.

1352. *Add. Annotation:*—**Mentd.** Eustace *v.* Eustace, [1924] P. 45.

1370. *Add. Annotation:*—**Mentd.** *Re* A Debtor, [1922] 2 K. B. 109.

1376. *Add. Annotations:*—**Mentd.** The Tervaete, [1922] P. 259; The Russland, [1924] P. 55.

1379a. —— ——.]—In 1924 pltfs. instituted an action *in rem* in the United States in respect of damage done by defts.' ship to some pipe lines belonging to pltfs. in the bed of the river at Tampico, & the ship was arrested & released on bail being given by defts. Before the action in America had been brought to trial pltfs. issued a fresh writ *in rem* in England, & on Feb. 27, 1926, re-arrested the ship in the Thames. On Mar. 4 defts. served notice of motion to set aside the writ & all subsequent proceedings in the English action. The American action was discontinued on Mar. 8:—*Held:* having obtained bail & so released the ship from any further claim in respect of the particular damage alleged, pltfs.' subsequent discontinuance of the action in America after the re-arrest in England did not cure their breach of good faith in instituting proceedings in England & causing the ship to be arrested again, & the writ & all subsequent proceedings must be set aside.—THE GOLAA, [1926] P. 103; 95 L. J. P. 60; 135 L. T. 208; 42

satisfy Evidence Act, N. B., c. 121, s. 58, if the document sought to be proved be a foreign judgment, the authenticated copy must either be sealed with the seal of the ct. in which the original is filed, or, in the event of such ct. having no seal, be signed by the judge, or one of the judges of such ct. with a statement from him in writing that the ct. has no seal.—HARRIS *v.* GAMSON (1921), 67 D. L. R. 683; 49 N. B. R. 91.—CAN.

T. L. R. 414; 70 Sol. Jo. 776; 17 Asp. M. L. C. 35.

1380. *Add. Annotations :*—**Distd.** The Juno (1922), 128 L. T. 671. **Apld.** The Golaa, [1926] P. 103.

1381. *Add. Annotation :*—**Consd.** The Juno (1922), 128 L. T. 671.

1383. *Add. Annotations :*—**Folld.** The Juno (1922), 128 L. T. 671. **Reld.** The Golaa, [1926] P. 103.

1383a. ——————————.]—On June 13, 1922, a British steamer & a Finnish steamer were in collision in the river Maas, Holland. After the collision the Finnish owners threatened arrest in a Dutch port. The owners of the British steamer who were anxious that the litigation should take place in England, reluctantly instructed their agents in Holland to provide bail, & although no proceedings were begun, documents in identical terms in the nature of bank guarantees to provide bail if proceedings were commenced within three months were exchanged on July 29 between the owners. On Sept. 6 the Finnish vessel came within the jurisdiction of the English cts., & an action was commenced, & the ship arrested & bail given under protest at the suit of the owners of the British ship. At that time no proceedings had been begun in Holland, but on Sept. 14 an action was commenced in Holland by the Finnish owners. The Finnish owners moved that the writ & all proceedings in the action by the British owners should be stayed, on the ground that their action was oppressive because it required the Finnish owners to give bail in two cts., & was inequitable as a breach of faith of the agreement in Holland :—*Held :* no legal proceedings having been commenced when the writ was issued in England, & there being no arrest & no bail given prior to the writ now sought to be set aside, there was nothing to debar the British owners from carrying on proceedings in England.—THE JUNO (1922), 128 L. T. 671; 16 Asp. M. L. C. 118.

PART XVI. SECT. 6, SUB-SECT. 2.

s. Add "*varied on appeal*, 4 A. R. 207."

CONSTITUTIONAL LAW.

Part II.—The Title to the Crown.

2. *Add. Annotation :—Generally*, **Mentd.** The Tervaete (1922), 128 L. T. 176.

Part III.—Relations between the Crown and the Subject.

17. *Add. Annotation :-* **Refd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

Part IV.—The Royal Family.

41. *Add. Annotation :* -**Mentd.** Perlak Petroleum Maatschappij *v.* Deen, [1924] 1 K. B. 111.

Part V.—The Royal Prerogative.

53. *Add. Annotation :* —As to (2) **Consd.** Nadan *v.* R., [1926] A. C. 482.

54. *Add. Annotation :* - **Refd.** Nadan *v.* R., [1926] A. C. 482.

Part VI.—The Crown in relation to the Executive.

100. After the cross-reference following this case add as follows :

Extension of British jurisdiction in British protectorate.]—*See* DEPENDENCIES, No. 10a.

Effect of recitals in.]—*See* ESTOPPEL, Vol. XXI., p. 331, No. 1247.

110. *Add. Annotation :*—**Refd.** Rufly-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

122. Before this case add "*See, also*, CROWN PRACTICE, Vol. XVI., pp. 481–491."

Add. Annotation :—**Mentd.** R. *v.* Comptroller-General of Patents, *Ex p.* Muntz (1922), 38 T. L. R. 652.

152. *Citations :*—For "[1920] 1 Ch. 107" read "[1921] 1 Ch. 107."

Add. Annotation :—**Mentd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

Part IX.—The Crown in relation to the Law.

233. *Add. Annotation :*—**Refd.** Nichol *v.* Fearby, Nichol *v.* Robinson, [1923] 1 K. B. 480.

272. *Add. Citation :*—48 L. J. Q. B. 455.

284. *Add. Citations :*—66 Sol. Jo. 218; *affd.*, [1922] P. 122.

PART VI. SECT. 2, SUB-SECT. 1.

el. —— —— *Ordinance made under Northern Territory Acts.*]—Plff. was a classified officer in the public service of Queensland in 1917. He was then appointed to the Commonwealth office of Director of Lands in the Northern Territory, & he continued to hold the position until 1921, when the Governor-General in Council dispensed with his services :—*Held :* the Crown had power to dispense, at will, with the services of plff., who was appointed under Ordinance No. 6 of 1913, made under the above Acts, & not under Commonwealth Public Service Act. THOMER *v.* THE COMMONWEALTH (1924), 34 C. L. R. 587.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 1.

h (p. 523) i. —— *For tort.*] An action sounding in tort does not lie against the Crown.—CREELMAN & VERGE *v.* R. (1920), 62 D. L. R. 390; 20 Exch. C. R. 198.—**CAN.**

h (p. 523) ii. *S. P.* YATES *v.* R. (1920), 20 Exch. C. R. 175.—**CAN.**

h (p. 523) iii. *S. P.* MANSEAU *v.* R., [1923] 1 D. L. R. 25; [1923] Exch. C. R. 21.—**CAN.**

h (p. 523) iv. —— ——.]—In an action against the Govt. of Ceylon to recover for damage caused to a steamship by grounding in Colombo harbour in a berth to which she had been taken by a Govt. pilot :—*Held :* it was not necessary to decide whether in Ceylon the Crown could be made liable in tort under Roman Dutch law, but having regard to the considered decision of the Supreme Ct. of Ceylon in *Colombo Electric Tramway Co. v. A.-G.*, inasmuch as the question in Ceylon was whether any particular part of Roman Dutch law had been recognised there, very clear arguments would be

291. *Add. Annotation* :—**Consd.** A.-G. for Straits Settlmts. *v.* Pang Ah Yew, [1925] A. C. 555.

292. *Add. Annotation* :—*As to* (2) **Reld.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

305. *Add. Citation* :—48 L. J. Q. B. 455.

317. *Add. Annotation* :— **Reld.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

329. *Add. Annotation* :—**Mentd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

344. *Add. Annotations* :—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. **Reld.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

345. *Add. Annotation* :—**Reld.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

346. *Add. Annotation* :—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

347. *Add. Annotation* :—**Mentd.** Umra *v.* R. (1924), 41 T. L. R. 80.

348a. —— **In proceedings under Patents & Designs Acts.**]—Appets. applied by originating summons under Patents & Designs Act, 1907 (c. 29), s. 29, as amended by Patents & Designs Act, 1919 (c. 80), s. 8, for an inquiry as to the remuneration proper to be paid to them for the user by a Govt. department of the patented invention of which they were the registered owners. In the course of the proceedings, preliminary to hearing of the motion, orders were made in which the litigation was treated, with the acquiescence of both litigants, as subject to the ordinary rule as to costs, & on two occasions orders were made requiring appets. to give security for costs. After the hearing had proceeded for some time appets. withdrew their claim in view of a prior trial of the invention found to have been made on behalf of the Govt. which, by virtue of the proviso to Patents & Designs Act, 1919, s. 8, entitled the Govt. to make use of it thereafter without payment. On the question how the costs ought to be borne :—*Held* : (1) under that part of Patents & Designs Act, 1919, which authorised proceedings against a Govt. department, there was no express mention of costs, & the authority to deal with them was derived from the general jurisdiction of the ct., & the ct. had, therefore, no authority to depart from the common law rule that the Crown neither paid nor received costs, unless the special circumstances of the particular case justified it in so doing ; (2) having regard to the orders that had been made before the hearing of the motion, & particularly to the two orders for security for costs, the ct. would infer an agreement between the parties that each of them should be treated as ordinary litigants as regarded liability for costs. —*Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53 ; 93 L. J. Ch. 309 ; 131 L. T. 89 ; 40 T. L. R. 421 ; 68 Sol. Jo. 476 ; 41 R. P. C. 203, C. A.

lution — As to (1) **Consd.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

— ——.]—*See, generally*, Patents.

363. *Add. Annotations* : —**Mentd.** A.-G. *v.* Swan, [1922] 1 K. B. 682 ; Gibson *v.* Reach (1923), 40 T. L. R. 73.

367. *Add. Annotation* : **Apld.** of France *v.* Harris. Same (1926), 42 T. L. R. 760.

368. *Add. Annotation* **Reld.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

373a. **Arbitration to assess compensation for requisitioned goods.**] In assessing the compensation to be paid for bacon requisitioned by the Food Controller under Defence of the Realms Regulations : *Held* : the arbitrator had no power to order the Crown to pay the costs of the reference & award. - Swift & Co. *v.* Board of Trade, [1926] 2 K. B. 131 : 95 L. J. K. B. 834 , 135 L. T. 301 ; 42 T. L. R. C. A.

to induce the Judicial Com- o reverse that decision.— Petroleum Co., Ltd. *v.* A.-G. for Ceylon, [1926] A. C. 147 ; 95 L. J. P. C. 86 ; 134 L. T. 305 ; 42 T. L. R. 166.—**CEYLON.**

h (p. 523) v. —— *For fraud.*]—It is not competent to prove that the Crown has been guilty of fraud ; nor can the Crown be held liable for the fraud of

2 D. L. R.
W. W. R. 459.—**CAN.**

291 xiv. ——————.]—An of damages does not lie against the Crown in respect of a wrongful act committed by one of its servants.—Macgregor *v.* Lord Advocate, [1921] S. C. 847.—**SCOT.**

j (p. 524) i. ——————.]—Welden *v.* Smith, [1924] A. C. 484.—**AUS.**

y (p. 524). Add "*revsd.*, 30 B. C. R. 42."

y (p. 525) i. ——————.]—Leclerc *v.* R. (1920), 62 D. L. R. 324 ; Exch. C. R. 236.—**CAN.**

in under Public Utilities Act, s. 31, for an accident caused by a fallen telephone wire lying on the public highway, being part of a system of wires erected maintained by the provincial ment of Railways & Telep Zoraan *v.* R., Hamilton *v.* R. 2 W. W. R. 1179 ; 67 D. L. R. 733. **CAN.**

PART IX. SECT. 6, SUB-SECT. 2.

304 ii. ——.]—R. *v.* Perreault (1922), 66 D. L. R. 671 ; 21 Exch. C. R. 355.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 6.

337 vi. ——.]—Estoppel cannot be invoked against the Crown.—R. *v.* Tessier (1921), 21 Exch. C. R. 150. - **CAN.**

339 iii. ——.]—A subject has no right to set off in an action brought by the Crown.—R. (Minister of Agriculture for Saskatchewan) *v.* Bourke, [1925] 3 D. L. R. 537 ; [1925] 2 W. W. R. 397 ; 19 Sask. L. R. 483. **CAN.**

o i. ——.]—A counterclaim Crown *v.* R , 64 L. R. 5) O. **CAN.**

oii. ——. A to counterclaim in by the Crown.—R. ture for ke, [1925] 3 D. L. R. [1925] 2 W. W. R. 397 ; 19 Sask. R. 483.—**CAN.**

oa. *Whether action brought in* —In under Sol defts. contended that the action have been brought in the name of Soldiers Settlement Board & not in that of the Crown :—*Held* : action properly instituted in that of the Crown. - R. *v.* Hayward Trading & Ranching Co., Ltd., [1924] Exch. C. R. 15.- **CAN.**

PART IX. SECT. 6, SUB-SECT. 7.- A.

sh. Cro 1911 (c. 61) *Effect of.*] to apply to the Crown in Dominion, the statute not in o

an other than in right of the ince only. -Montreal Trust Co. *v.* R. [1924] 1 D. L. R. 1030 ; 1 W. W. R. 657 ; 33 B. C. R. 280.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 7.— C.

t i. —— *On appeal.*] - Under C Act, R. S. B. C., c. 61, costs of

may by direction of the -R. *v.* Cashin (1922), 70 D. L. R 5 ; 38 Can. Crim. Cas. 198. - **CAN.**

t
, 1922 (c. 15).] - A loca of the marshal in carrying out on for t " with 1911 (c. 61 of

Howard, [1924] 4 D. L. R. 564 ; [1924] 3 W. W. R. 404 ; 34 B. C. R. 449.—**CAN.**

376. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch.

382. *Add. Annotation :*—**Refd.** R. *v.* Provisional Government (General of the Forces) (1922), 67 Sol. Jo. 125.

Part XII.—The Crown in Foreign Relations.

387. *Add. Annotations :—As to* (1) **Folld.** White, Child & Beney *v.* Simmons, White, Child & Beney *v.* Eagle, Star & British Dominions Insce. (1922), 127 L. T. 571. **Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte de Mulhouse (1924), 93 L. J. K. B. 1098. *As to* (2) **Apld.** The Jupiter (1924), 93 L. J. P. 156.

388. *Citations :* —For "Coop. Pr. Cas. 501; 9 L. J. O. S. Ch. 215; 47 E. R. 619, L. C.," read "Coop. Pr. Cas. 501; 47 E. R. 619; *sub nom.* THOMPSON *v.* BARCLAY, 9 L. J. O. S. Ch. 215, L. C.; *previous proceedings* (1828), 6 L. J. O. S. Ch. 93."

391. *Add. Annotation :*—**Refd.** The Tervaete, [1922] P. 259.

392. *Add. Annotation :—As to* (2) **Refd.** The Tervaete, [1922] P. 259.

394. *Add. Annotations :*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Refd.** The Tervaete, [1922] P. 259; *Re* Bjorustad & Ouse Shipping Co., [1924] 2 K. B. 673; Compania Mercantile Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; The Jupiter (1924), 93 L. J. P. 156. **Mentd.** The Mogileff, [1922] P. 122; The Sylvan Arrow, [1923] P. 220.

401. *Add. Annotation :*—**Apld.** The Tervaete, [1922] P. 259.

Add. Annotation :—**Refd.** Fenton Textile Assocn. *v.* Krassin (1921), 38 T. L. R. 259.

412a. **Chief of mail department—Within privilege.**] —*Held :* the rule as to immunity from civil proceedings, on the ground of diplomatic privilege, extended to a domiciled subject of the United States who was the chief of the mail department of the United States Embassy in London.—ASSURANTIE COMPAGNIE EXCELSIOR *v.* SMITH (1923), 40 T. L. R. 105, C. A.

465. *Add. Annotation :*—**Mentd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385.

474. *Add. Annotation :*—**Mentd.** Kramer *v.* A.-G., [1923] A. C. 528.

Part XIII.—The Crown in relation to War and Peace.

477. *Add. Annotation :—Generally*, **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

483. *Add. Annotation :—Generally*, **Mentd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

487a. —— ——.]— By a policy of insurance effected on Nov. 2, 1918, during the European War, deft. agreed to pay to pltf. a certain sum "in the event of peace between Great Britain & Germany not being concluded on or before June 30, 1919." On June 28, 1919, these Powers signed a treaty of peace, but they did not exchange & deposit ratifica- of the treaty until Jan. 1920. In an brought by pltf. against deft. upon the in Aug. 1919 :—*Held :* peace had not concluded between these Powers on or before June 30, 1919, within the policy, & pltf. was therefore entitled to succeed in the action.—KOTZIAS *v.* TYSER, [1920] 2 K. B. 69; 89 L. J. K. B. 529; 122 L. T. 795; 36 T. L. R. 194; 15 Asp. M. L. C. 16.

n :—**Folld.** Lloyd *v.* Bowring (1920), 36 T. L. R.

487b. —.]— For the purpose of a contract to pay a sum of money "if peace is not declared" by a certain date between two nations at war, peace is not declared until the ratification of the treaty of peace—LLOYD *v.* BOWRING (1920), 36 T. L. R. 397.

496. *Add. Annotation :* **Refd.** Cayzer, Irvine *v.* Board of Trade (1920), 95 L. J. K. B. 1051.

498. *Add. Annotation :*—**Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

499. *Add. Annotations :—As to* (1) **Refd.** Federated

PART XIII. SECT. 2.

923] 1 W. W. R. 37. CAN.

487 n. *Between Great Britain &*

on —PARRY

v.

W. W. R. CAN.

PART XIII. SECT. 3, SUB-SECT. 1.

ss. *Order in Council* of, 1914, s. 6 omission of

that the Governor in Council an Order advisable for the w of by reason of the existence of or apprehended war, did not render the Order in Council invalid.—PRESLEY *v.* GARSON (1922), 50 N. B. R. 414.—CAN

PART XIII. SECT. 3, SUB-SECT. 3.

1. *Whether owner entitled to*

.]—R. *v.*
D. . R. 3 ; 20 Exch. C. R. 30.
CAN.

a building occupied by the Govt. as a recruiting station was not a "public work" within Exch. Ct. Act, s. 20 (c). —WOLFE Co. *v.* R., POWERS *v.* R. (1921), 63 D. L. R. 647; 63 S. C. R. 141.—CAN.

499a 1. —— *Indemnity Act,*
920 (c. 48)— *of assessment.*]—

war, owing to a fire while it was in Govt.'s possession, could not be for distilling for nearly three Jan. 19, 1919, at which date

Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42. *As to* (4) **Reld.** A. & B. Taxis *v.* Secretary of State for Air, [1922] 2 K. B. 328; Matthey *v.* Curling, [1922] 2 A. C. 180; *Re* Colnbrook Chemical & Explosives Co., A.-G. *v.* The Co., [1923] 2 Ch. 289; Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271. *Generally*, **Reld.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81. **Mentd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369; Fort Frances Pulp & Power Co. *v.* Manitoba Free Press Co., [1923] A. C. 695; Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608; Moffat Hydropathic Co. *v.* Secretary of State for War (1924), 40 T. L. R. 543.

499a. —— Under Indemnity Act, 1920 (c. 48) — "Direct loss or damage"—What is.]—Claimants carried on business as motor garage proprietors in Dublin, where they owned & occupied extensive premises peculiarly well suited to their purposes. These premises were taken by the Govt. under powers conferred by statute for the defence of the realm. Claimants, having tried & failed to acquire premises temporarily, took the only reasonable course; they bought other premises, fitted them for use as a garage, & transferred to them all the appliances of their business which they thus continued to carry on as well as they could. When the Govt. retired from possession of the original premises claimants sold the substituted premises. They alleged that the difference between the amount they had expended in acquiring the substituted premises & fitting them for use as a garage on the one hand, & the sum they received on the sale of the substituted premises on the other hand amounted to £3,429. They claimed this sum as an item of "direct loss or damage incurred or sustained by reason of interference with" their "property or business" within sect. 2 (1) (*b*) of the above Act:—*Held*: "direct loss or damage" may include consequential damage, & the item claimed could not be entirely excluded as indirect loss, but the amount to which claimants might be entitled in respect thereof must be assessed by the War Compensation Ct.—A. & B. Taxis, Ltd. *v.* Secretary of State for Air, [1922] 2 K. B. 328; 91 L. J. K. B. 779; 127 L. T. 478; 38 T. L. R. 671; 66 Sol. Jo. 633, C. A.

499b. —— —— Duty of tribunal assessing compensation.]—Observations on the question of the extent of the duty of the War Compensation Ct., in deciding a claim for compensation under the above Act, to differentiate between their findings on issues of fact & their findings on issues of law, in

view of there b[illegible] Act, no right of [illegible] law.—Moffat [illegible] Secretary of [illegible] T. L. R. 543; C[illegible]

512. *Add. Annotation*: Coal & Shippin[illegible] 42; Rowland [illegible] T. L. R. 228.

515a. —— —— Clo[illegible] land acquired.]—[illegible] tion by the Ai[illegible] of the above [illegible] manently a pub[illegible] they had purch[illegible] for an air depot[illegible] War *v.* Middle[illegible] 30 T. L. R. 357; [illegible] Asp. M. L. C. 205.

526. *Add. Citation*: [illegible] *Add. Annotation*: [illegible] *As to* (3) **Distd.** A.-G. [illegible] Packet Co., [1022] 2 *v.* Royal Mail Steam[illegible] A. C. 270.

b26a. Power to impose [illegible] ship to foreigne[illegible] Indemnity Act, [illegible] Shipping Cont[illegible] pursuance of [illegible] the Realm [illegible] suppliants as [illegible] a licence to s[illegible] the payment t[illegible] By their petit[illegible] that the Ship[illegible] authority to i[illegible] the payment[illegible] under protest[illegible] thereby beca[illegible] to suppliant[illegible] their use. [illegible] brought with[illegible] of the war [illegible] exaction of th[illegible] to the petitio[illegible] if founded on[illegible] Controller wa[illegible] & if based o[illegible] the proceed[illegible] within the [illegible] proviso (b)[illegible] ground of [illegible] right would[illegible] tort, for the[illegible] pliants con[illegible] to waive th[illegible] received by[illegible] the hands[illegible] no ground[illegible] respect of[illegible] Shipping

[illegible] ment for licence to sell [illegible] Recovery of money paid — **1920 (c. 48), s. 1 (1).**]—The [illegible]ller, purporting to act in [illegible]s powers under Defence of [illegible]egulations, imposed upon [illegible] condition of granting them [illegible] a steamship to a foreigner [illegible]lum by suppliants of £30,800. [illegible]n of right suppliants alleged [illegible]ing Controller had no lawful [illegible]pose a condition or to exact [illegible] which suppliants had paid & that the Shipping Controller [illegible]e liable to repay the money [illegible] as money had & received to [illegible]he petition of right was not [illegible] one year from the termination [illegible] or within one year from the [illegible] money. The Crown demurred [illegible]n, on the ground that the case [illegible] the alleged tort of the Shipping [illegible]s barred by the above sub-sect., [illegible] an alleged breach of contract, [illegible]ngs not having been brought [illegible] prescribed time failed under [illegible] of that sub-sect. A further [illegible]emurrer was that a petition of [illegible] not lie against the Crown for [illegible]king could do no wrong. Suppliants contended that they were entitled [illegible] tort & to sue for money had & [illegible]e Shipping Controller & now in [illegible] of the Crown, & that their claim [illegible] was not a proceeding for or in [illegible] on account of any act of the [illegible]Controller, & therefore was not

[illegible] LEMAY *v.* R. (1922), 68 D. L. R. 485; 21 Exch. C. R. 361. CAN.

525 II. *Who entitled. Charterer or owner.*]—Whereas the right of action against the Crown is at common law in the owner & not in the charterer:—*Held*: the true intent, meaning & spirit of War Measures Act, 1914, s. 7, is to maintain & preserve to the subject any rights possessed by him at common law, & which he previously had notwithstanding that Act; & that sect. does not confer upon him any new rights to compensation in addition to those which he otherwise enjoyed. Warner Quinlan Asphalt Co. *v.* R., [1923] Exch. C. R. 195. CAN.

525 I. *Compensation for requisition of ship—To what amount claimant entitled—Comparison with rate in United States better guide than English rate & Re* Clarton, Williams & Wigmore, Clarton, Williams & Wigmore [illegible] Corpn. *v.* R. (1922), 68 D. L. R. 212; 21 Exch. C. R. 370. CAN.

Dominion Govt. was empowered to requisition ships in its own name & as principal & not as agent for the British Govt., & the Minister of Marine & Fisheries, acting thereunder, had no power to vary same by adding to or derogating therefrom. *Re* Clarton, Williams & Wigmore & Clarton, Williams & Wigmore, Steamship Corpn. *v.* R. (1922), 68 D. L. R. 24; 21 Exch. C. R. 370. CAN.

within the terms o
allegation that supp
extorted from them
the Shipping Cont
part of suppliants'
claim for money ha
as such act was o
sub-sect. applied, t
barred by that sub-
STEAMERS, LTD. *v.* I
40 T. L. R. 550; 68

526b. ——————.]— purporting to act Defence of the Realm a condition of a licer- one of their ships to -ntage of the purchase should pay a perce ry of Shipping, & sup- money to the Mi*nistr*entage. On a petition liants paid the r back the money so paid :— of right to reco- imposition of the condition *Held* : (1) th the payment was not a volun- was illegal, & (2) the petition of right was tary payment, bove sub-sect.; it was not barred by the , by waiving the tort of open to supplia suing for money had the illegal exaction & e case within par. (b) & received, to bring t sub-sect., for the case of the proviso to the tion to the proviso fell within the excep a claim for compensa- as being one in which brought under sect. tion could have been & SARGANT, L.JJ.) 2 (1) (*b*); (3) (BANKES: the case within the suppliants failed to bringer ground that the proviso upon the furth paragraph (b) are contracts referred to ontracts, & do not limited to express c tract to repay money include the fictitious con implication of which improperly extorted, the he tort.— BROCKLE- arises upon a waiver of t 1 K. B. 52; 94 BANK, LTD. *v.* R., [1925 166; 40 T. L. R. L. J. K. B. 26; 132 L. T Asp. M. L. C. 415, 869; 69 Sol. Jo. 105; 16 B. 647.
C. A.; *revsg.*, [1924] 1 K. hal Shipping Co. *v.* R.

Annotations :—*As to* (2) **Followed.** Marsh., **Refd.** Bristol Channel (1925), 41 T. L. R. 285. *Generally*, Steamers *v.* R. (1924), 131 L. T. 6 ppliants were re-

526c. ——————.]—Su quired in 1919 by the Shipping Controller to pay £20,000 to th Exchequer as a condition of his giving t em permission to sell a steamship to a foreig ner, & they made the payment accordingly. On a petition of right to recover back the amount from the Crown on the ground that the demand was unlawful :—*Held* : as t demand was made in the *bond fide* belief that the Shipping Controller was entitled to make it & as he was purporting to act in the execution of his duty the Crown was protec ted by the above sub-sect.— MARSHAL SHIPPING CO. (IN LIQUIDATION) *v.* R. (1925), 41 T. L. R. 285.

526d. ——————— **Transfer of liabilities incurred by Shipping Controller to Board of Trade— Whether action maintainable against Board of Trade.**]—(1) Pltfs. in 1922 brought an action against the Board of Trade for money had & received. The money to have been sought to recover was alleged to have been wrongfully extorted from pltfs. in 1919 by the Shipping Controller under colour of his office, & it was alleged that, on pltfs. electing to waive the tort, he would have been personally liable to refund the money as having been received to their use. By

the Act :—*Held* : the suppliants' money had been by the wrongful act of troller was an essential case, from which the d & received arose; & ne to which the above e petition of right was ect.—BRISTOL CHANNEL t. (1924), 131 L. T. 608; Sol. Jo. 771.

The Shipping Controller under the authority of Regulations, required as ce to suppliants to sell a foreign firm that they one of their ships to purchase should pay a commission to the Ministry of Shipping, & suppliants paid the money to the Ministry. On a petition of right to recover back the money so paid :—*Held* : (1) the payment was not a voluntary payment, & (2) the petition of right was not barred by the above sub-sect.; it was not barred by the fact that by waiving the tort of suing for money had & received, to bring the case within par. (b) of the proviso to the sub-sect., for the case fell within the exception to the proviso as being one in which a claim for compensation could have been brought under sect. 2 (1) (*b*); (3) (BANKES & SARGANT, L.JJ.) that the suppliants failed to bring the case within the proviso upon the ground that the paragraph (b) are contracts referred to in the proviso to the sub-sect., for the contracts, & do not include the fictitious contract to repay money implication of which was improperly extorted, the tort.—BROCKLEBANK, LTD. *v.* R., [1925] 1 K. B. 52; 94 L. J. K. B. 26; 132 L. T. 166; 40 T. L. R. 869; 69 Sol. Jo. 105; 16 Asp. M. L. C. 415, C. A.; *revsg.*, [1924] 1 K. B. 647.

Annotations :—*As to* (1) **Refd.** G. S. & W. Ry. of Ireland *v.* R., [1924] 2 K. B. 450. *As to* (3) **Refd.** Brocklebank *v.* R., [1924] 1 K. B. 647. *Generally*. **Refd.** Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608.

liabilities incurred by Shipping Controller to Board of Trade— Whether action maintainable against Board of Trade.]—(1) Pltfs. in 1922 brought an action against the Board of Trade for money had & received. The money to have been sought to recover was alleged to have been wrongfully extorted from pltfs. in 1919 by the Shipping Controller under colour of his office, & it was alleged that, on pltfs. electing to waive the tort, he would have been personally liable to refund the money as having been received to their use. By the Ministry of Shipping (Cessation) Order, 1921, it was provided that the office of Shipping Controller should cease to exist, & that "All . . . liabilities . . . incurred by the Shipping Controller . . . shall be transferred to the Board of Trade." The "Board of Trade" is the name given by statute to an unincorporated committee of the Privy Council. On an application to strike out the writ on the ground that the Board of Trade, as a department of the Crown, could not be sued :—*Held* : the intention of the Order was to transfer to the Board of Trade as a Govt. department the personal liabilities, if any such there were, of the Shipping Controller for any wrongful acts committed by him in his office, & the Board was liable to be sued in respect of those acts notwithstanding that it was an unincorporated body.

(2) Although the Board of Trade may in the above-mentioned circumstances be sued as a Govt. department, service of the writ must, unless the solr. to the Board accepts service on their behalf, be effected upon the individual constituent members of the Board personally.

(3) Where an official of a Govt. department wrongfully extorts a sum of money from a subject for the use of the Crown & the injured party waives the tort :—*Qu.* : whether he can sue the official personally as for money had & received, or whether his only remedy is not by petition of right against the Crown.—MARSHAL SHIPPING CO. *v.* BOARD OF TRADE, [1923] 2 K. B. 343; 92 L. J. K. B. 901; 129 L. T. 644; 30 T. L. R. 415; 67 Sol. Jo. 639; 16 Asp. M. L. C. 210, C. A.

Annotations :—*As to* (1) **Refd.** G. S. & W. Ry. of Ireland *v.* R., [1924] 2 K. B. 450. *As to* (3) **Refd.** Brocklebank *v.* R., [1924] 1 K. B. 647. *Generally*. **Refd.** Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608.

Actions against Departments of State generally, *see* AGENCY, Vol. I., pp. 654, 655; PUBLIC AUTHORITIES.

530. *Add. Annotations* :—*As to* (1) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271; I. R. Comrs. *v.* Newcastle Breweries (1926), 135 L. T. 618.

531. *Add. Annotations* :—*As to* (5) **Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529. *Generally*. **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271. **Mentd.** Fort Frances Pulp & Power Co. *v.* Manitoba Free Press Co., [1923] A. C. 695.

534. *Add. Annotation* :—**Consd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

534a. ——————.]—A British ship lying in a neutral port & laden with a cargo of timber belonging to neutrals of another country was requisitioned during the war by the British Govt. & brought home with her cargo to England without the consent & against the protest of the cargo owners. The timber was then requisitioned by the Controller of Timber Supplies on behalf of the Board of Trade avowedly under Defence of the Realm Regulations, 2B & 2JJ. The owners of the cargo made a claim in the War Compensation Ct. for compensation & contended that it should be assessed under Indemnity Act, 1920 (c. 48), s. 2 (2) (iii.) (*a*), on the ground that in the circumstances they would but for the Act have had a legal right to compensation :—*Held* : (1) the regulations

did not apply to a seizure of goods of a neutral brought into England against his will; (2) the requisition of the timber was justifiable as an exercise of the royal prerogative right of angary & was, therefore, made "in exercise of" a "prerogative right to His Majesty" within s. 2 (1) (*b*) of the Act, & inasmuch as that right involved the obligation to pay full compensation to the owner of the property seized, claimants "would have had apart from" the Act a valid claim for compensation by petition of right, &, the Crown admitting that such a claim constituted "a legal right to compensation," compensation was to be assessed according to the principle laid down in s. 2 (2) (ii.) (*a*) of the Act.—COMMERCIAL & ESTATES CO. OF EGYPT *v.* BOARD OF TRADE, [1925] 1 K. B. 271; 94 L. J. K. B. 50; 132 L. T. 510, C. A.

Annotation:—*As to* (2) **Consd.** Netherlands-American Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

535a. Right to compensation—Under Indemnity Act, 1920 (c. 48)—Exercise of right of angary.] COMMERCIAL & ESTATES CO. OF EGYPT *v.* BOARD OF TRADE, No. 534a,

539. *Add. Annotations:*—*As to* (1) **Refd.** R. *v.* Cannon Row Police Station Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98. *Generally*, **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

Part XIV.—The Crown as the Fountain of Honour.

563. *Add. Annotation:*—**Consd.** Rhondda's Claim, [1922] 2 A. C. 339.

Part XIX.—Royal Grants.

. *Add. Annotation:*—**Mentd.** *Re* Holliday, [1922] 2 Ch. 698.

653. *Add. Annotation:* **Mentd.** The Fagernes, 26] P.

655. *Add. Annotation:*—*Generally*, **Mentd.** *v.* Hedges, [1923] 2 K. B. 314.

661. *Add. Annotation:* **Mentd.** Layzell *v.* son (1926), 43 T. L. R. 58.

680. . *Annotation:*—**Mentd.** Rhondda's Claim, 22] 2 A. C. 330.

690. *Add. Annotation:*—**Mentd.** Harper *v.* Hodges, [1923] 2 K. B. 314.

706. *Add. Annotation:* **Refd.** Hodgson *v.* Mc-

786. *Add. Annotation:* **Mentd.** Layzell *v.* T son (1926), 43 T. L. R. 58.

notations:—**Mentd.** Koursk, . 140; Performing s Booker (Palais de so), [1924] 1 K. B. 762; Falcon *v.* Famous ers Film Co. (1925), 42 T. L. R. 91.

Part XXI.—Hereditary and Private Revenues of the Crown.

857. *Add. Annotations:*—*As to* (4) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. *As to* (5) **Refd.** *Re* Letters at No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

PART XIX. SECT. 2, SUB-SECT. 3.—A.

q. Add "*revsd. on other grounds*, 9 Gr. 224."

PART XIX. SECT. 2, SUB-SECT. 3.—C.

h. Add "*revsd. on other grounds*, 19 A. R. 329."

PART XIX. SECT. 3, SUB-SECT. 2.

656 i. Add "*revsd. on other grounds*, 19 A. R. 329."

662 ii. Add "*revsd. on other grounds*, 19 A. R. 329."

PART XIX. SECT. 3, SUB-SECT. 3.—A.

r i. ——.}—A Crown grant of land, as to part of the land granted, used the words "grant, convey & assu as to other land granted, " release & quit claim": *Held*: conveyed the fee simple, & the could convey the fee simp ject to conditions & reservations in the grant.—NORTHERN TRUST CO. *v.* TURNER, [1923] 2 D. L. R. 1176.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—E.

l i. —— ——.}—The reservation in a Crown grant of the mines & minerals "with full power to work the same & for this purpose to enter upon & use or occupy the lands or so much thereof in the of land & D. L. R. 642.—**CAN.**

of the this conve

ed of "all *v.* CAR-

PART XX. SECT. 6.

s1. *Sale of land under Soldiers Settlement Act, 1919—Failure of soldier to perform agreement—Crown not entitled to warrant of possession.*) A.-G. FOR CANADA *v.* PAGE, [1924] Exch. C. R. 62.—**CAN.**

CONTRACT.

Part I.—Definitions and Classification.

3. *Add. Annotation :* **Reld.** Rose & Frank Co. v. Crompton, [1923] 2 K. B. 261.

4. For the existing paragraph substitute the following paragraph :—

—— —— **Legal effect expressly excluded.**]—By successive arrangements made before 1913 between an American firm & an English co. the American firm were constituted sole agents for the sale in the United States & Canada of tissues for carbonising paper supplied by the English co. The greater part of these tissues was manufactured for this English co. by another English co. By an arrangement made between the American firm & both English cos. in 1913 the English cos. expressed their willingness that the existing arrangements with the American firm, which were then for one year only, should be continued on the same lines for three years & so on for further periods of three years, subject to six months' notice. This document, after setting out the understanding between the parties, including several modifications of the previous arrangements, proceeded as follows : "This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement, & shall not be subject to legal jurisdiction in the law cts. either of the United States or England, but it is only a definite expression & record of the purpose & intention of the three parties concerned, to which they each honourably pledge themselves, with the fullest confidence—based on past business with each other—that it will be carried through by each of the three parties with mutual loyalty & friendly co-operation. This is hereinafter referred to as the 'honourable pledge' clause." Disputes having arisen between the parties, the English cos. determined this arrangement without notice. Before the relations between the parties were broken off the American firm had given & the first-mentioned English co. had accepted certain orders for goods. In an action by the American firm for breach of contract & for non-delivery of goods :—*Held :* (1) the arrangement of 1913 was not a legally binding contract ; (2) at the date of the arrangement of 1913 all previous agreements were determined by mutual consent ; (3) the orders given & accepted constituted enforceable contracts of sale.—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., [1925] A. C. 445 ; 94 L. J. K. B. 120 ; 132 L. T. 641 ; 30 Com. Cas. 163, H. L.

5. *Add. Annotation :*—**Mentd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

Part II.—Parties to Contract.

17. *Add. Annotation :* **Reld.** Johnson *v.* Stephens & Carter & Golding, [1923] 2 K. B. 857.

48. *Add. Annotations :*— *As to* (1) **Reld.** Clarkson *v.* Davies, [1923] A. C. 100 ; Duffner *v.* Bowyer (1924), 40 T. L. R. 700 ; *Re* Pennington & Owen, [1925] Ch. 825. *As to* (2) **Reld.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., [1926] A. C. 701. *Generally*, **Mentd.** The Koursk, [1924] P. 140 ; *Re* Pennington & Owen (1925), 95 L. J. Ch. 83 ; Bennett *v.* Whitehead, [1926] 2 K. B. 380 ; Pure *v.* Johnson (1926), 70 Sol. Jo. 1023.

129. After this case add "*See, also*, No. 36, *ante*."

150. *Add. Annotation :* — **Consd.** Johnson *v.* Stephens & Carter & Golding, [1923] 2 K. B. 857.

165. *Add. Annotation :*—**Consd.** United Dairies *v.* Public Trustee, [1923] 1 K. B. 460.

197. *Add. Annotation :*—**Reld.** Key *v.* Bustin, [1925] 1 K. B. 650.

209. *Add. Annotation :*—**Consd.** York Glass Co. *v.* Jubb (1925), 42 T. L. R. 1.

272. *Add. Annotation :*—**Reld.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 338.

273. *Add. Annotation :* —**Mentd.** Cockburn *v.* Smith, [1924] 2 K. B. 119.

Part III.—Formation of Contract.

278. *Add. Annotation :*—**Mentd.** Jones (Holloway) *v.* Woodhouse, [1923] 2 K. B. 117.

297a. **Offer & acceptance—Though in pursuance of unenforceable agreement.**]—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., No. 4, *ante*.

PART III. SECT. 1.

ak. (*Contract subject to approval—Effect of approval.*) *Held :* the effect of a clause in a contract, which made the agreement subject to the approval of the Governor-General in Council, was to suspend the contract pending the giving of such approval, & upon such approval being given the contract took effect & became enforceable.—HAWKE'S PENINSULA ELECTRIC POWER BOARD *v.* AKABUA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—N.Z.

al. —— *Sufficiency of approval.*]—A contract contained a provision that it should be deemed executed & become binding only when approved by the proper officers of the vendor co. Beneath the signatures of the contracting parties a form of approval was signed by certain persons as

396. *Add. Annotations :*—**Reld.** Jones (Holloway) v. Woodhouse, [1923] 2 K. B. 117. **Mentd.** Bradford v. Price (1923), 92 L. J. K. B. 871.

418a. —— —— **"Orders to be acknowledged by return."**]—Defts.' departmental manager orally agreed on their behalf to buy certain goods from pltf. & signed an order form on which was printed the clause, "orders to be acknowledged by return," but this term had not been orally agreed & no acknowledgment was sent to defts. In an action for breach of the contract defts. pleaded that there was merely an offer & no contract, as the only document contained a clause which had not been agreed :—*Held :* (1) the words on the order form, "orders to be acknowledged by return," were not intended to be words of contract ; (2) the words "by return" related only to the time within which, & not to the method by which, acknowledgment was to be made, & therefore there was a concluded contract, & pltf. was entitled to recover.—WILLIS v. BAGGS & SALT (1925), 41 T. L. R. 453 ; 69 Sol. Jo. 513.

429a. —— **What amounts to—Offer of house & "furniture"—Acceptance of house & "furniture & fittings as it stands."**]—Pltf. having an option from deft. to purchase a freehold house "with furniture for £1,000," wrote accepting deft.'s offer to sell the house "with the furniture & fittings as it stands" : *Held :* there was a concluded contract between managers. There was evidence that they occupied these positions, but no evidence that they were the proper officers of the vendors for approval of the contract : *Held :* approval could be shown by the subsequent conduct of the vendors. CENTRAL SUPPLY CO. OF CANADA v. O'NEIL MORRIS MACHINERY CO., [1924] 2 D. L. R. 183 ; 1 W. W. R. 1017.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C. (a).

328 i. *What amounts to—Counter offer.*]—Specific counter offer or rejection puts an end to an offer.—SHAW v. JONES, [1924] N. Z. L. R. 1133.—**N.Z.**

328 ii. —— —— —.]—Deft., through his agent, sent pltf an offer to sell him land for $1,800 on terms. Pltf wired the agent : "Send lowest cash price. Will give $1,600 cash. Wire." The agent replied by wire : "Cannot reduce price." Pltf then wrote accepting the offer :—*Held :* the telegram reading "Cannot reduce price" was a renewal of the original offer, not merely a rejection of pltf.'s counter offer, & pltf.'s acceptance of it completed a contract of sale. LIVINGSTONE v. EVANS, [1925] 4 D. L. R. 769 ; [1925] 3 W. W. R. 453.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C. (c) I.

337 viii. ——.]—Where a document was no more than an offer & was withdrawn before acceptance ;—*Held :* there was no contract.—GOODISON THRESHER CO. v. DOYLE (1925), 57 O. L. R. 300.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

366 vi. —— —— *Intention to discuss terms with third party.*]—Where parties have discussed terms, but one before finally accepting them intends to discuss the matter with others :—*Held :* there cannot be said to be a binding contract.—CARBON COAL & CLAY CO. v. NANOOSE-WELLINGTON COLLIERIES, [1923] 1 D. L. R. 1160.—**CAN.**

370 xiii. —— —— *Acceptance stating understanding of offer made.*]—The Halifax Graving Dock & plant were wrecked by explosion in 1917, & in Jan. 1918, the Canadian Govt. passed an Order in Council providing that the work of repair should be entrusted to appts. on the condition (*inter alia*) that the latter should contribute the amount of insurance it carried & the Govt. pay the balance. A letter was sent to the co. enclosing a copy of the Order & stating "an agreement is being prepared & will be submitted shortly for signature," but no agreement was ever executed. Two days later the co. wrote to the Minister of Public Works that the terms of the Order were satisfactory & adding, "but in order that all will be quite clear our understanding is that we are to assign our insurances & policies to the Govt., & that the temporary buildings now being constructed are to be replaced by permanent buildings of the same kind as the original" : *Held :* the letter of the co. to the Minister did not contain an unqualified acceptance of the terms set out in the Order in Council. —HALIFAX GRAVING CO. v. R. (1921), 62 S. C. R. 338.—**CAN.**

am. *Time for—Time limited by contract.*]—Where appt. had not notified his acceptance within the fixed time, & in the absence of proof that resp. had waived his right to demand definite written notice as stipulated :—*Held :* there was no valid acceptance. —LAWS v. RUTHERFORD, [1924] App. D. 261.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 2.—B. (b) ii.

an. *Delivery of goods—Before time laid down in order.*]—Appt. sent an order on June 7 to resp. to send him on hire a binder, to be delivered on or about Oct. 1. The order contained a term that it was not to be binding on resp. until received & ratified in writing or by actual delivery of the goods to appt., & that the order might be cancelled by appt. giving notice to resp. by registered letter at least thirty days prior to date for delivery, with a proviso that if prior to that date or six months thereafter appt. ordered a binder from any other person, resp. might by registered notice revive the order, & deliver the binder within thirty days. An agent of resp. was told by appt. that he wished to cancel the order, as he was buying a harvester, & the agent notified resp., but no notice was given by appt. to resp. On Sept. 2, resp. forwarded by rail a binder to appt., & wrote him stating that the binder had been forwarded per rail. The machine arrived, & appt. refused to take delivery, but admitted he had received the letter : *Held :* the letter did not amount to a ratification of the order, & a delivery on Sept. 2 did not necessarily imply a delivery pursuant or referable to the stipulation in the contract for delivery on or about Oct. 1, & there was no acceptance of the order. BLACKETT v. CLEVELAND BRICKWORKS (AUSTRALIA), LTD., [1923] S. A. S. R. 301.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2, D.

423 viii. ——.]—Deft., through his agent, offered pltf. 300 tons of hay at $22 per ton. Pltf. accepted, & the agent wired his principal asking that shipment be rushed. Deft. replied that he could not confirm the order for immediate delivery, but would book for delivery the last of the month :—*Held :* a contract valid in law was then completed, & deft. could not subsequently vary it by demanding a deposit of $2 per ton as a condition of shipping. BALLAM v. HATFIELD (1922), 53 N. B. R. 305.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

479 v. —— —— *Acceptance by telegram—Fresh term inserted in letter of confirmation.*]—PL. DENIS v. WESTERN PRODUCTS, LTD., [1923] 3 W. W. R. 854.—**CAN.**

489. After the cross-references following this case insert "**Construction of contracts by correspondence.**]—*See* DEEDS, Vol. XVII., p. 245, Nos. 588–592."

492. *Add. Annotation :*—**Folld.** Chillingworth *v.* Esche, [1924] 1 Ch. 97.

496. *Add. Annotation :*—**Reld.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

511. *Add. Annotation :*—**Reld.** Chillingworth *v.* Esche, [1924] 1 Ch. 97.

514. *Add. Annotation :*—**Reld.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

531. *Add. Annotation :*—**Reld.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

534. *Add. Annotation :*—**Reld.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

540. *Add. Annotations :*—**Apld.** Chillingworth *v.* Esche, [1924] 1 Ch. 97; Lockett *v.* Norman-Wright (1924), 69 Sol. Jo. 125.

545. *Add. Annotations :*—**Consd.** Chillingworth *v.* Esche, [1924] 1 Ch. 97. **Apld.** Lockett *v.* Norman-Wright (1924), 69 Sol. Jo. 125.

546a. – – – "**Subject to suitable agreements being arranged between your solicitor & mine.**"]—The words "subject to suitable agreements being arranged between your solr. & mine" are indistinguishable in their effect from such words as "subject to formal contract," "subject to contract," or "subject to proper contract to be prepared by the vendor's solr.," & do not import a binding agreement between the parties.—LOCKETT *v.* NORMAN-WRIGHT, [1925] Ch. 56; 94 L. J. Ch. 123; 132 L. T. 532; 69 Sol. Jo. 125.

546b. ——— "**Subject to a proper contract to be prepared by the vendor's solicitors.**"]—By a document of July 10, 1922, the purchasers agreed to purchase certain freehold land & a nursery from the vendor "subject to a proper contract to be prepared by the vendor's solrs." & acknowledged having paid £240 "as deposit & in part payment of the said purchase-money." Completion was fixed for Nov. 2. The purchasers signed the document & the vendor added & signed a receipt for the deposit confirming the sale. A proper contract was subsequently prepared by the vendor's solrs., approved by the purchasers' solr., executed by the vendor, & tendered to the purchasers for execution. The purchasers, however, refused to sign it, declined to proceed with the transaction, & claimed the return of the deposit:—*Held:* the document of July 10, 1922, was only conditional, & did not constitute a firm contract, & the purchasers were in the circumstances entitled to recover the deposit.—CHILLINGWORTH *v.* ESCHE, [1924] 1 Ch. 97; 93 L. J. Ch. 129; 129 L. T. 808; 40 T. L. R. 23; 68 Sol. Jo. 80, C. A.

Annotation :—**Apld.** Lockett *v.* Norman-Wright, [1925] Ch. 56.

555. *Add. Annotation :*—**Reld.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

559. *Add. Annotation :*—**Reld.** Berners *v.* Fleming, [1925] Ch. 264.

576. *Add. Annotation :*—**Reld.** Brocklebank *v.* R., [1924] 1 K. B. 647.

587. *Add. Annotation :*—**Reld.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

611. *Add. Annotation :*—**Reld.** Shears *v.* Jones (1922), 128 L. T. 218.

739. *Add. Annotation :*—**Consd.** Pontypridd Grdns. *v.* Drew (1926), 90 J. P. 169.

743a. – – – – – **Outdoor relief afforded to pauper.**]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied.—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

See, further, POOR LAW.

747. *Add. Annotation :*—**Reld.** Brandt *v.* Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.

748. *Add. Annotations :*—**Mentd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Paterson Zochonis *v.* Elder

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489 iii. ——— *Effect of correspondence coupled with conduct—Substantial part of goods delivered.*] *Held:* a contract was established whereby pltfs. became bound to deliver the remainder of the goods.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367; 54 O. L. R. 585. **CAN.**

PART III. SECT. 2, SUB-SECT. 5.

490 x. – .] Where a proposal to manufacture certain steel rails was accepted in writing by the party to whom it was sent, such acceptance stating that it would be followed by a formal contract, & where it appeared that the formal contract was intended solely to embody the agreement already arrived at:—*Held:* in such a case, looking to the intentions of the parties, the contractual relations between them should be regarded as based upon the terms so agreed upon.—DOMINION IRON & STEEL CO. *v.* R. (1920), 67 D. L. R. 609; 20 Exch. C. R. 245.—**CAN.**

ii. – – – – – .]—An option for sale read as follows: "The owners agree to give H. the option to purchase the lands herein leased at any time within the period of lease for $25 per acre, $2,000 cash & the balance at six per cent. interest & half crop payments, by agreement to be drawn up":—*Held:* the words "by agreement to be drawn up" had the same effect as the words "subject to an agreement to be drawn up," &, since the agreement was to be on the crop-payment plan, the pl. could not supply the details necessary to complete it, & the option did not of itself constitute an enforceable contract.—BOCALTER *v.* HAZLE, [1925] 4 D. L. R. 948; [1925] 3 W. W. R. 577; *revsg.* 19 Sask. L. R. 417; [1925] 2 W. W. R. 436.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

pi. – – – *Failure to read over whole contract.*]—Where a purchaser of a large farm implement does not read English, Farm Implement Act, R. S. S., 1920 (c. 128), s. 18, is not complied with unless the whole contract is read over & explained to him in his own language, even though he understands some English &, after the whole contract has been read to him in English, those portions of it which he says he does not understand in English are read over & explained to him in his language, & he says he understands it all.—ADVANCE RUMELY THRESHER CO. *v.* YORMA, [1925] 4 D. L. R. 5; [1925] 3 W. W. R. 150.—**CAN.**

564 i. *What amounts to consensus ad idem—Contract of sale silent as to time & mode of payment.*]—Defts. having ratified by telegram a contract made by their agents, afterwards attempted to repudiate it on the ground of an alleged variation in the terms of the bought note as to the time of delivery. Defts.' letter of repudiation to their agents attempted to impose terms as to the time for payment as a condition of accepting the alleged variation:—*Held:* the contract was complete notwithstanding that the particular mode or time of payment was not stated.—CAMPBELL *v.* MAHLER (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.*, 15 O. W. N. 339.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—C. (a).

599 i. *Contract voidable.*]—An agreement in writing by a wife to the provisions of her husband's will in lieu of the statutory provisions:—*Held:* to have been obtained by duress & not a bar to her application for relief under Devolution of Estates Act, 1920, s. 24.—*Re* BURSAW'S ESTATE, [1924] 3 W. W. R. 807.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A. (a).

611 vi a. ———.]—RAGHUNATH PRASAD *v.* SARJU PRASAD (1923), L. R. 51 Ind. App. 101.—**IND.**

PART III. SECT. 3, SUB-SECT. 3.—B.

636 i. *Onus on party alleging—Unless transaction prima facie unconscionable.*]—RAGHUNATH PRASAD *v.* SARJU PRASAD (1923), L. R. 51 Ind. App. 101.—**IND.**

Dempster, [1923] 1 K. B. 420; Lake v. Simmons (1926), 95 L. J. K. B. 586.

763. *Add. Annotation:*—*Generally*, **Refd.** Moyrick v. Dyson (1925), 41 T. L. R. 308.

Part IV.—The Statute of Frauds.

769. *Add. Annotation:*—**Refd.** Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise (1926), 12 T. L. R. 735.

772. *Add. Annotation:*—**Refd.** Monnickendam v. Leanse (1923), 39 T. L. R. 445.

775. *Add. Annotations:*—**Refd.** Newman v. Slade, [1926] 2 K. B. 328. **Mentd.** Brakspear v. Barton, [1924] 2 K. B. 88.

793. *Add. Annotation:*—**Expld.** Scott v. Pattison, [1923] 2 K. B. 723.

803. *Add. Annotation:* **Mentd.** Hall v. I. R. Comrs. (1926), 135 L. T. 750.

810. *Add Annotations:*—*As to* (3) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76 **Refd.** Rawlinson v. Ames (1924), 69 Sol. Jo. 142.

819. *Add. Annotation:*—*As to* (1) **Refd.** Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc., [1925] Ch. 769.

840. *Add. Annotations:*—**Consd.** Jacobs v. Batavia & General Plantations Trust, [1924] 1 Ch. 287. **Refd.** Michael v. Phillips (1923), 130 L. T. 142.

841. *Add. Annotations:*—**Consd.** Jacobs v. Batavia & General Plantations Trust, [1924] 1 Ch. 287. **Refd.** Michael v. Phillips (1923), 130 L. T. 142.

844. *Add. Annotation:*—**Refd.** Michael v. Phillips (1923), 130 L. T. 142.

845. *Add. Annotation:*—**Refd.** Collins v. Hopkins, [1923] 2 K. B. 617.

845a. —— Parol warranty to let for certain purposes.]—Pltf., in an action for damages for breach of warranty in connection with the letting to him of certain premises, alleged that as a basis of negotiations which culminated in an agreement in writing whereby defts. agreed to let & pltf. agreed to take the premises in question, defts. verbally warranted to let the premises for dancing purposes. Defts. had no power to let the premises for such purposes without the consent of the superior landlord, & such consent was never in fact obtained. Pltf. took possession under the agreement & expended considerable sums in alterations, & now claimed to recover the amount of such expenses less the sums received by him during his possession of the premises. There was no fraudulent misrepresentation: *Held:* pltf. had failed to establish the alleged parol agreement, & even if the evidence had established that before the contract was entered into pltf. had asked whether the premises could be let for dancing & had been answered in the affirmative, it would only have been evidence as to the subject-matter of the contract & could not control, vary, or add to the terms of the written contract.—CRAWFORD v. WHITE CITY RINK (NEWCASTLE-ON-TYNE), LTD. (1913), 29 T. L. R. 318; 57 Sol. Jo. 357; 77 J. P. Jo. 111.

—— Implied warranties.]—*See, generally*, LANDLORD & TENANT.

862. *Add. Annotation:*—**Refd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

888. *Add. Annotation:*—*As to* (2) **Refd.** Chillingworth v. Esche (1923), 129 L. T. 808.

892. *Add. Annotation:*—**Distd.** McDonald v. Nash, [1924] A. C. 625.

PART III. SECT. 4, SUB-SECT. 2.—C.

u i. —— *Contract to dig well.*]—When a party contracts to bore a well, with a proviso that he is to be paid a proportion of the price if it is a dry hole, there is an implied promise to go the distance his machinery will bore, & if because of a rock he does not go that distance it is not a "dry hole," & he is not entitled to payment.—WINKLER & MARTIN v. HUTTON, [1920] 2 W. W. R. 982; 13 Sask. L. R. 335.—**CAN.**

u ii. —— ——.]—Where a hole is caving in & rendering it dangerous for him to work, & a well-digger abandons the work without having obtained water & without having gone to the full depth of his machine, he is not entitled to payment for the work already performed. A well-digger knows, & must be held to have assumed, these risks when he has not in his contract protected himself against such contingencies.—SAVIDAN v. LAFLANTE, [1924] 3 D. L. R. 1089; 2 W. W. R. 1222.—**CAN.**

u iii. —— *Contract for removal of night soil—Special provisions as to cleansing.*]—*Held:* the contract was one entire contract & every provision in it for strict cleanliness & disinfection was of the very essence & nature of the contract.—HUNTER v. WEST MAITLAND MUNICIPAL COUNCIL (1923), 23 S. R. N. S. W. 420.—**AUS.**

PART III. SECT. 4, SUB-SECT. 2.—D.

ai. ——.]—ANDERSON v. MCINTYRE, [1925] 3 D. L. R. 918. **CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—A.

sp. *Agreement to be performed before fixed date—Fixed date more than one year from agreement—Effect of renewals.*]—In 1921 deft. promised to marry pltf. at a date not later than May, 1923. The promise was renewed from time to time up to May, 1922:—*Held:* the contract was one to be performed within a year, & a memorandum in writing to satisfy stat. Frauds was unnecessary.—CYR v. DUFAULT (1923), 55 O. L. R. 90.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—B. (a).

at. *Agreement for partnership—For indefinite period.*]—A written contract, which provides for the continuance of a partnership from its date until dissolved by mutual consent, unless previously determined by a specified notice, is not an agreement that is not to be performed within the space of one year from the making within Instruments Act, 1915, s. 228.—GIBB v. SELL, [1922] V. L. R. 561; 28 Argus L. R. 305; 44 A. L. T. 1.—**AUS.**

aw. *Agreement to marry before fixed date—Promise renewed from time to time.*]—In 1921 deft. promised to marry pltf. not later than May, 1923. The promise was renewed from time to time up to May, 1922:—*Held:* the contract was one to be performed within a year, & a memorandum in writing to satisfy stat. Frauds was unnecessary.—CYR v. DUFAULT (1923), 55 O. L. R. 90.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—C.

823 ii. —— *Share-milking agreement Commencement & termination not stated.*]—*Held:* the contract was one for services not to be performed within one year from the making thereof, & therefore came within the statute.—HALL v. GOLDSTONE, [1923] N. Z. L. R. 916. **N.Z.**

PART IV. SECT. 1, SUB-SECT. 7.

838 i. *Promise to pay debt of another—Subsequent credit given to guarantor as principal debtor—Not entire.*]—*Held:* as to goods supplied before the alleged promise, the promise was one to answer for the debt of another & under stat. Frauds was unenforceable because of the absence of a memorandum in writing to support it; but as to goods supplied subsequently, although the account was continued in the buyer's name, it was established that the surety became the principal debtor & the goods were supplied on his account, & no memorandum in writing was required to enforce the claim.—HATMAN & MATTHEWS v. SPENCER, [1923] 4 D. L. R. 170; 16 Sask. L. R. 474; [1923] 1 W. W. R. 1251.—**CAN.**

893. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

900a. Contract rectified by court—On ground of mistake.]—Where owing to a mistake common to both parties to a contract in writing it does not express the true bargain between the parties, the ct. in England has jurisdiction, since Jud. Act, 1873 (c. 66), to rectify the contract & to order specific performance of it as rectified, although apart from the rectified contract there is no memorandum to satisfy Stat. Frauds.—U.S.A. *v.* MOTOR TRUCKS, LTD., [1924] A. C. 196; 93 L. J. P. C. 46; 130 L. T. 129; 39 T. L. R. 723, P. C.

914. *Add. Annotation :* **Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

923a. Agreement to remain in force so long as another agreement continued.]—Defts. agreed in writing to purchase from pltfs. all the stores that they required in the United Kingdom for their vessels, pltfs.' profits on the net price invoiced by the manufacturers to pltfs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pltfs. for five months defts. repudiated it: *Held:* the two agreements were sufficiently connected to enable the second to be read with the first, & Stat. Frauds did not prevent pltfs. from contending that the first agreement was to last for ten years.—FRANCO-BRITISH SHIP STORE CO., LTD. *v.* COMPAGNIE DES CHARGEURS FRANCAISE (1926), 42 T. L. R. 735.

924. *Add. Annotation :*—**Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

930. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

933. *Add. Annotation :* **Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

980. *Add. Annotation :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

983. *Add. Annotation :*—*As to* (2) **Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

989. *Add. Annotations :*—*As to* (2) **Apld.** Chillingworth *v.* Esche, [1923] 1 Ch. 576. **Foll'd.** Monnickendam *v.* Leanse (1923), 39 T. L. R. 415.

1002. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

1032. *Add. Citations :*—92 L. J. Ch. 598; 129 L. T. 659; 39 T. L. R. 576; 67 Sol. Jo. 638, C. A.

1059. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 92 L. J. Ch. 461.

1063. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 416.

PART IV. SECT. 2, SUB-SECT. 3. A.

900a I. *Contract rectified by court.*]—As against a defence of Stat. Frauds, the ct. has no power to reform a writing & then decree specific performance of it as reformed.—SWITZER *v.* TREASURER (1923), 54 O. L. R. 70.—**CAN.**

ss. *Order in Council.*]—*Held:* an Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown.—LAMARRE & CO. *v.* R., [1923] Exch. C. R. 171. **CAN.**

PART IV. SECT. 2, SUB-SECT. 3. B.

sh. *Contract not absolutely arranged. Alleged variation of terms.*]—Defts.'s agents in A., on Oct. 14, 1913, telegraphed to defts. in business in O., that they had sold to pltfs. a carload of apples for shipment on opening of navigation. On Oct. 16, defts. answered accepting. On that day the agents sent defts. a bought note, stating the terms of contract as in the telegram, with additions. On Oct. 20, defts. wrote to the agents: "I will return contract, as I find you have worded contract 'opening of navigation 1914.' I will not accept contract on those terms unless they will pay for the goods when packed": *Held:* if the terms of the contract had not sufficiently appeared by the telegrams & the bought note, the letter of Oct. 20 would have supplied a sufficient memorandum to satisfy Stat. Frauds, although it contained a repudiation of the contract.—CAMPBELL *v.* MARTIN (1919), 43 O. L. R. 339, 14 O. W. N. 348; *affd.*, 15 O. W. N. 339. **CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

923 I. *Letter referring to previous correspondence.*—*Contract constructively asserted in therein.*] Vendor's solr. wrote to purchaser's solr. "R. informs me that he has agreed with R. for the sale to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr., in acknowledging the letter, stated: "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement": *Held*, the latter letter constituted a note or memorandum sufficient to satisfy Stat. Frauds, although the writer had no intention to sign one.—CLONCURRY (LORD) *v.* LAFFAN, [1924] 1 I. R. 78.—**IR.**

PART IV. SECT. 2, SUB-SECT. 3.—C (b).

fl. —*From purchaser to partner. Stating terms of purchase.*]—In an action against D., claiming damages for breach of contract to purchase bonds, a telegram from D. to his partner was produced saying, "I absolutely bought them yesterday after our phone conversation, they agreeing to our terms." *Held:* parol evidence was properly received to show that terms had been stated by D., over his signature, that they were the only terms & were those referred to in the telegram, & the two constituted a sufficient memorandum within Stat. Frauds.—DORAN *v.* MCKINNON (1916), 33 S. C. R. 609.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (a).

971 I. *General rule.*]—A writing is not sufficient to make a contract of purchase of land comply with Stat. Frauds unless the parties to the contract are specified in the writing, either nominally or by description or reference, & in such a manner that there can be no fair or reasonable dispute as to their identity. A letter signed by a purchaser, addressed to persons who are the vendor's agents, but not mentioning the vendor, & there being nothing creating a contract binding upon the agents personally, is not sufficient to make a contract enforceable against purchaser under Stat. Frauds.—MARTIN *v.* BARKER, [1924] 3 D. L. R. 292; 2 W. W. R. 796; 34 B. C. R. 136.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—B. (b).

1027 II. —*Admission of existence of contract.*]—Vendor's solr. wrote to purchaser's solr.: "R informs me that he has agreed with R for the sale to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr. in acknowledging the letter stated: "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement": *Held:* this letter constituted a note or memorandum signed by purchaser's agent sufficient to satisfy Stat. Frauds, although he had not been specifically authorised to sign such a memorandum, & in writing the letter had no intention to sign one.—CLONCURRY (LORD) *v.* LAFFAN, [1924] 1 I. R. 78.—**IR.**

PART IV. SECT. 2, SUB-SECT. 4.—B. (d).

q. Read now "**1034** I."

1034 II. —*Share-milking agreement.*]—*Held:* an incomplete memorandum of the terms of the contract, & the result was the same as if there were no memorandum at all.—HALL *v.* GOLDSTONE, [1923] N. Z. L. R. 916.—**N.Z.**

1035 II. —*Share-milking agreement.*]—HALL *v.* GOLDSTONE, No. 1034 II., *ante*.—**N.Z.**

PART IV. SECT. 2, SUB-SECT 5.—A.

ss. *Rule at trade.*—*No signature by sub-purchaser.*]—*Held:* where Stat. Frauds applied liability could only be established by an acknowledgment in writing.—WORDINGTON *v.* HYAM, [1923] 3 D. L. R. 854; 32 B. C. R. 434.—**CAN.**

1068. *Add. Annotation :*—**Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142.

1074. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1077. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1078. *Add. Annotation :*—*As to* (1) **Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1087. *Add. Annotation :* **Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1089. *Add. Annotation :* **Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1092. *Add. Annotation :* **Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1109. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1119. *Add. Annotations :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576; Mounickendam *v.* Leanse (1923), 39 T. L. R. 445.

1121. *Add. Annotation :* **Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1125. *Add. Annotation :* **Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1170. *Add. Annotation :*—**Apld.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1174. *Add. Annotation :*—**Mentd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287.

1176. *Add. Annotations :*—**Refd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76; Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142.

1213a. ——— **Refusal to pay for instalments until whole work published.**]—A purchaser contracted to purchase a series of engravings from pltfs., the publishers, by signing a circular to the following effect: "Please enter my name as a subscriber for 'The Cries of London,' to be sent to me as published, the price of each of the thirteen plates, £10 10s." After pltfs. had delivered the first four plates of the series, they called on deft. to pay for them, but he refused to do so till the entire set was published & delivered: *Held:* the words "to be sent to me as published" made it clear that the contract was an instalment contract, & not an indivisible contract for the entire set, & the fact that the price of each plate was stated to be ten guineas, while there was no mention of the price of the whole set, showed that each instalment was to be paid for separately.—HOWELL *v.* EVANS (1926), 134 L. T. 570; 42 T. L. R. 310, D. C.

1214. *Add. Citations :* [1923] 2 K. B. 723; 92 L. J. K. B. 880; 129 L. T. 830.

1235. *Add. Annotation :* **Consd.** Rawlinson *v.* Ames, [1925] Ch. 96.

1245. *Add. Annotation :* **Refd.** Ryce *v.* Purcell, [1926] 1 K. B. 146.

1247. *Add. Annotation :* **Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142.

1269. *Add. Annotation :* **Refd.** Heystead *v.* Taxation Comm., [1926] A. C. 155.

Part V.—Consideration.

1274. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1299. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1383. *Add. Annotation :* **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

1388. *Add. Annotation :*—**Mentd.** Sweet *v.* Williams (1922), 128 L. T. 370.

1459a. ———.] S., a customer of bkpt., a stockbroker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £300, & covenanted with him that, in the event of his refraining from giving notice

PART IV. SECT. 2, SUB-SECT. 6.—A.

1144 ii. ———.]—Parol evidence received to show that terms had been stated by a purchaser over his signature & were those referred to in a telegram from him to his partner.—DORAN *v.* McKINNON (1916), 53 S. C. R. 609.—CAN.

PART IV. SECT. 3, SUB-SECT. 3.—A.

1223 i. *General rule.*]—Where a person suggested to the owner of mineral rights that he should transfer same, & said if anything came of it he would give the owner a share, & the rights were transferred without any other consideration:—*Held:* notwithstanding the agreement was only verbal & within Stat. Frauds & Mineral Act (B. C.), s. 19, it should be enforced, as these Acts will not be allowed to be made instruments of fraud.—ROBERTS *v.* ROBERTS, [1923] 2 W. W. R. 137.—CAN.

PART IV. SECT. 3, SUB-SECT. 3.—B. (d).

ii. ——— *Agreement to work in consideration of employer promising to devise realty—Liability for services rendered.*]—*Held:* the employee was entitled to compensation on a *quantum meruit* for work performed & services rendered for deceased employer. *Re* MORTON, MORTON *v.* GRAY (BANK.), [1925] 4 D. L. R. 887; [1925] 3 W. W. R. 656.—CAN.

PART IV. SECT. 3, SUB-SECT. 4. B. (a).

1237 viii. ———.] The act of part performance relied on must be unequivocally referable to the agreement alleged. TILLEY *v.* CLARK & HENDERSON (1887), 7 Nfld. L. R. 209.—NFLD.

1237 ix. ———.]—In order to enforce specific performance of an oral contract, whereby deceased promised to devise land to another in consideration of the latter working for deceased until the latter's death, the acts relied on as part performance excluding Stat. Frauds must be unequivocally referable to the contract asserted.

The fact that a son left his employment & lived & worked on his father's farm for ten years without drawing wages:—*Held:* not to point unmistakably to a contract by the father to leave his property to the son. A the alleged contract, not being evidenced by writing, was not enforceable.—*Re* MORTON, MORTON *v.* GRAY (BANK.), [1925] 4 D. L. R. 887; [1925] 3 W. W. R. 656.—CAN.

PART V. SECT. 1.

1274 iv. ———.] A good cause of action can be founded on a promise made seriously & deliberately & with the intention that a lawful obligation should be established.—CONNELL *v.* [illegible] 1919, 59 D. L. R. 274.—S. AF.

PART V. SECT. 3, SUB-SECT. 2.—A.

ad. Promise to allow offer of option for premium.]—A promise to allow a third party to offer the promisee an option on shares does not constitute a valuable consideration.—FARMERS *v.* McVICAR (Nov. 11, 1924), 3 W. W. R. 151.—CAN.

PART V. SECT. 3, SUB-SECT. 2.—B. (a).

ai. Abandonment of claim.]—Where any question arising between the parties on a previous verbal agreement had been compromised, & the said promises embodied in a written agreement, *Held:* sufficient consideration for the compromise was an abandonment of a claim by each party.—BRADSHAW *v.* McLEAN, [1924] 3 D. L. R. 610; 2 W. W. R. 611; 34 Man. L. R. 239.—CAN.

of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the t, on the instructions of both without disclosing same, made an agreement with S. for the liquidation of the two debts, S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or to cover the instalments allocated to the later debt. J. received the notes from S. &, as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled :—*Held:* the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes. *Re* WETHERED, *Ex p.* SALAMAN, [1926] Ch. 167; 70 Sol. Jo. 321; *sub nom. Re* WETHERED, *Ex p.* SALAMAN'S TRUSTEE, TRUSTEE *v.* BANCE, 95 L. J. Ch. 127; 134 L. T. 261; [1925] B. & C. R. 265.

1460. *Add. Annotation :* **Consd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

1462. *Add. Annotation :* **Reld.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

1475. *Add. Annotation :* —**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1525. *Add. Annotation :* **Reld.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

1527. *Add. Annotations :*—**Reld.** Burrell *v.* Leven (1926), 42 T. L. R. 407; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32; **Mentd.** *v.* Union Bank of Manchester, [1924] 2 K. B. 153.

1542. *Add. Annotation :* **Reld.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

1565. *Add. Annotation :*—**Mentd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

1578. *Add. Annotation :*—**Consd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

1590. *Add. Annotation :*—**Reld.** Hall *v.* I. R. Comrs. (1926), 135 L. T. 759.

1594. *Add. Annotation :*— **Mentd.** Lewis *v.* McKay, Algate *v.* Vugler, Clark *v.* Potter (1924), 93 L. J. K. B. 840.

1630. *Add. Annotation :*—**Consd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

1641. *Add. Annotation :*—**Consd.** Brandt *v.* Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.

1659. For "(1549)" read "(1850)."

1662. *Add. Annotation :*—**Reld.** The Lord Strathcona, [1925] P. 143.

1701. *Add. Annotation :*—**Reld.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

1702. *Add. Annotation :* — **Mentd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

1741. *Add. Annotation :* —**Mentd.** Venn *v.* Tedesco, [1926] 2 K. 227.

1837. *Add. Annotation :*— **Reld.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

1838. *Add. Annotation :*— **Reld.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

1839. *Add. Annotations :*—**Mentd.** The Empress (1922), 92 L. J. P. 42; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; Pratt *v.* Patrick, [1924] 1 K. B. 488.

1871. *Add. Annotations :*—**Reld.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. **Mentd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

1877. *Add. Annotation :* — **Consd.** Rowland *v.* Divall, [1923] 2 K. B. 500.

1878. *Add. Annotation :* — **Consd.** Rowland *v.* Divall, [1923] 2 K. B. 500.

1887a. *Add. Citations :*—[1923] 2 Ch. 452; 92 L. J. K. B. 944; 129 L. T. 624; 67 Sol. Jo. 656.

1905. *Add. Annotations :*—**Consd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576. **Reld.** Monnickendam *v.* Leanse (1923), 39 T. L. R. 445.

PART V. SECT. 5.

sk. *third party to be a* [illegible] *son.*] M. gave G. an option on [illegible] owned by M. in a co.; the [illegible] in

Held: the alleged consideration was in effect a mere promise by G. to [illegible] other shareholder give him an [illegible] to that given by M., & [illegible] did not constitute a [illegible] ration.—GIBSON *v.* (No. 1), [1922] 1 W. W. R. 151.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.—A.

[illegible] ent.) Plff. [illegible] to build [illegible] e for d ft. for When [illegible] house was a fire [illegible] place in it, [illegible] Deft. had the building to [illegible] with & complete the work, & [illegible] them to understand that she would [illegible] to them: [illegible] plffs. were bound to complete the work, [illegible] se, if there was one, to pay for the work which it was their duty to do, was not binding for want of consideration.—SMITH *v.* DAWSON (1923), 53 O. L. R. 615.—**CAN.**

PART V. SECT. 12, SUB-SECT. 1.

[illegible] timber A condition in a special [illegible] under Land Act (B. C.), [illegible] Chinese or [illegible] employed in [illegible] a part of [illegible] con[illegible] to the renewal of [illegible] BRITISH COLUM[illegible] & Co., [192[illegible] W. [illegible] 9; [illegible] R. 466.—**CAN.**

[illegible] *in law — for practice.*]—A. [illegible] a contract to receive a corre[illegible]ance course in law. In Canada this is not sufficient to qualify a person to practice in the law. In an action for the [illegible] to be paid:—*Held:* this insufficiency did not amount to a failure of consideration.—RULE *v.* BRADNER, [1923] 4 D. L. R. 81.—**CAN.**

[illegible] sm. *to building — Re-* [illegible] —An alteration [illegible] n to a building proved to be in violation of a bye-law & had to be removed. The owner set up a defence to an action for payment for such alteration that there had been a failure of consideration:—*Held:* the owner was bound to pay.—ORPHEUM THEATRICAL CO. *v.* VULCAN ENGINEERING CONSTRUCTION CO., [1923] 3 D. L. R. 52.—**CAN.**

Part VI.—Void and Illegal Contracts.

1938. *Add. Annotations:—Generally*, **Reld.** Sorrell v. Smith, [1925] A. C. 700. **Mentd** Brimelow v. Casson, [1924] 1 Ch. 302; Reynolds v. Shipping Federation, [1924] 1 Ch. 28; Thompson v. British Medical Assocn. (New South Wales Branch), [1924] A. C. 764; British Oxygen Co. v. Liquid Air, [1925] Ch. 385.

1961. *Add. Annotation:*—**Reld.** Cohen v. Roche (1926), 95 L. J. K. B. 915.

1981. *Add. Annotation:*—**Mentd.** *Re* Engelbach's Estate, Tibbetts v. Engelbach, [1924] 2 Ch. 348.

1984. *Add. Annotations:* —**Reld.** Burrell v. Leven (1926), 42 T. L. R. 407; Richardson v. Monerieffe (1926), 43 T. L. R. 32. **Mentd.** Greenhalgh v. Union Bank of Manchester, [1924] 2 K. B. 153

1986. *Add. Annotation:* **Reld.** Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

2011a. — — — **Knighthood.**]—If a contract which is illegal as being contrary to public policy has any element of turpitude in it the parties to the contract are *in pari delicto*, & if one of the parties to the contract has been defrauded, no action for damages can be maintained by the party defrauded, even though the contract is not of a criminal nature.

The secretary of a charity fraudulently represented to P. that he or the charity was in a position to undertake that P. would receive a knighthood if P. made a large donation to the funds of the charity, & undertook that the title would be conferred if the donation was made. P., relying upon those representations & in the belief that the secretary was authorised by the charity to give the undertaking, made a large donation to the funds of the charity. As P. did not receive the knighthood he brought an action against the charity & its secretary to recover back the money he had paid as money had & received or as damages for deceit or breach of contract:—*Held:* a contract for the purchase of a title, however the money is to be expended, is an improper & illegal contract, as being against public policy, & as P. knew that he was entering into an improper & illegal contract he could not recover back the money he had paid from the charity as money had & received, nor recover damages from the charity or its secretary, nor claim to repudiate the contract as being still executory & recover back the money paid.—PARKINSON v. COLLEGE OF AMBULANCE, Ltd. & HARRISON, [1925] 2 K. B. 1; 93 L. J. K. B. 1060; 133 L. T. 135; 40 T. L. R. 880; 69 Sol. Jo. 107.

2084a. — — **Marine insurance—Not expressed in sea policy.**]—No contract for sea insurance is valid unless it is expressed in a sea policy. The contract in this case was a contract for sea insurance &, not being expressed in a policy, was unenforceable.

The expression of an agreement for sea insurance otherwise than in a policy is a thing forbidden in the public interest (Lord SUMNER). NAGORMULL v. TRITON INSURANCE Co., Ltd. (1924), 41 T. L. R. 168, P. C.

2089. *Add. Citation:* 15 Asp. M. L. C. 560.

Add. Annotations: —**Distd.** Pinnock v. Lewis & Peat, [1923] 1 K. B. 690. **Mentd.** The Christel Vinnen, [1924] P. 61.

2089a. Agreement for recovery of betting debt.]—Pltf. carried on business as the "Turf Register," which in a prospectus issued by him was called a "society"; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amounts recovered, he undertook to collect for the subscribers betting debts which, under the provisions of the Gaming Acts, were not recoverable. It was agreed between him & deft., in the terms of the prospectus, that in consideration of pltf. putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly was to be equally divided between claimant & the society. Pltf. brought an action to recover the amount of debts alleged to have been wrongfully collected by deft. in breach of the agreement: *Held:* the agreement was illegal & void, being contrary to public policy,

PART VI. SECT. 3.

1950 iv. — — — — .]—A.-G. for BRITISH COLUMBIA v. BROOKS, BIDLAKE & Co., [1922] 3 W. W. R. 9; 63 S. C. R. 166; 66 D. L. R. 475.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.—A.

an. *Manufacture of goods with false description.*]—Pltf. co.'s salesman purported to enter into contracts for the sale to deft. of quantities of "All British" motor tyres & tubes. The goods would be manufactured in Melbourne, but each contract stipulated that the words "English Manufacture" should be branded upon them, & deft. intended to sell the goods, relying upon the brand to imply that they had been manufactured in England:—*Held:* at common law the proposed brand would be a fraud on the public, & the maxim *ex turpi causa non oritur actio* applied.—BARNET GLASS RUBBER CO., LTD. v. MCDONALD, [1922] N. Z. L. R. 767; Gaz. L. R. 213.—**N.Z.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (f) iii.

ap. *Assignment of money due under mail-contract.*]—A mail-contract prohibited the assignment of moneys due thereunder without the consent of the Postmaster-General:—*Held:* such an assignment was not void as contrary to public policy, on the analogy of assignments of salaries of public servants.—HOLDEN & TOLLEY, Ltd. v. CONNEL, [1923] N. Z. L. R. 876.—**N.Z.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (i).

2086 iii. — — — — — — .]—Deft. employed pltf., a land agent & member of a municipal council, to sell his land to the Closer Settlement Board under Discharged Soldiers Settlement Acts. Pltf. submitted the land to the Board, but before the sale he had resigned his position on the council. Under the above Acts pltf., as a member of the council, could be called upon to advise the Board in connection with purchase of land within the municipality. In an action by pltf. to recover from deft. commission on the sale:—*Held:* the private interest of pltf. under his agreement with deft had a tendency to interfere with the proper discharge by pltf. of his public duty, & the agreement was illegal & void as being against public policy.—WOODS v. LITTLE, [1922] V. L. R. 11; 29 C. L. R. 561; 27 Argus L. R. 466.—**AUS.**

2086 iv. — — — — .]—*Held:* a contract by which pltf. was to use his supposed influence with members of the Govt. for obtaining contracts in return for a commission was contrary to public policy & void.—CANADIAN GENERAL ELECTRIC Co. (1920), 48 D. L. R. 231; 55 D. L. R. 506; 19 O. W. N. 591.—**CAN.**

2086 v. — — — — — .]—Where a contract to pay a commission on the sale of property to a provincial Govt. is entered into on the understanding that the agent is a person having influence with the employees of the Govt. & that he will exercise such influence to bring about the sale:—*Held:* the contract is illegal.—MACMILLAN v. MOONEY, [1924] 4 D. L. R. 762; 3 W. W. R. 458.—**CAN.**

A pltf. could not recover.—FORD *v.* RADFORD (1920), 36 T. L. R. 658; 64 Sol. Jo. 571.

2112. *Add. Annotation:*—**Consd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2190a. ——— **Inference of new promise after divorce.**] Pltf., who at the time was a married woman, accepted deft.'s proposal of marriage, provided that she obtained a divorce. Pltf. did obtain a divorce, & deft. then gave her an engagement ring & the date of the wedding was arranged. Ultimately deft. married another woman. In an action for breach of promise of marriage deft. pleaded that the contract was void in law as being contrary to public policy:—*Held:* although the original promise was void yet a new promise, after pltf. had become a free woman, could be inferred from the giving of the ring & the arrangement of the date of the wedding, & pltf. was entitled to recover.—SCOTT *v.* KELLY (1926), 42 T. L. R. 258, P. C.

2214. *Add. Annotation:* **Refd.** Anderson *v.* Daniel (1924), 130 L. T. 418.

2215. *Add. Annotation:* **Apld.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

SUB-SECT. 2. PARTICULAR CONTRACTS RENDERED VOID OR ILLEGAL BY STATUTE (Vol. XII., p. 272).

Add the following cross-reference:—

Sale by other than imperial weights & measures.]—*See* WEIGHTS & MEASURES.

2226. *Add. Annotation:* **Apld.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2227. *Add. Annotation:* **Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2228. *Add. Annotation:* **Apld.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97.

2229. *Add. Annotation:* **Consd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2231. *Add. Annotation:* **Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2232. *Add. Annotation:* **Consd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2236. *Add. Annotation:* **Refd.** Anderson *v.* Daniel (1924), 130 L. T. 418.

2241. *Add. Annotation:* **Consd.** Garrard *v.* James, [1925] Ch. 616.

2285. *Add. Annotation:* **Followed.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2292a. ———.]—NAGOREMULL *v.* TRITON INSURANCE CO., LTD., No. 2084a, *ante*.

2317. *Add. Annotations:*—*As to* (2) **Refd.** Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Bowling *v.* Cox, [1926] A. C. 751. *Generally*, **Mentd.** Boston Corpn. *v.* Fenwick (1923), 129 L. T. 766; Holt *v.* Markham, [1923] 1 K. B. 504.

2325. *Add. Annotation:*—**Refd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2329a. ——— **Contract contrary to public policy.**]—PARKINSON *v.* COLLEGE OF AMBULANCE, LTD. & HARRISON, No. 2011a, *ante*.

2333. *Add. Annotation:*—**Refd.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97.

2337. For the cross-reference following this case, "**Whether parties in pari delicto.**]—*See* Nos. 2356, 2363, *post*," read "Whether parties *in pari delicto*, *see* Nos. 2353–2363, *post*."

2350a. ——— **Subscription to charity—On promise of knighthood—Promise by secretary.**]—PARKINSON *v.* COLLEGE OF AMBULANCE, LTD. & HARRISON, No. 2011a, *ante*.

2351. *Add. Annotation:*—**Refd.** Parkinson *v.* College of Ambulance & Harrison, [1925] 2 K. B. 1.

2358. *Add. Annotation:*—**Consd.** Parkinson *v.*

PART VI. SECT. 4, SUB-SECT. 4.—B. (b).

2096 i. ———.] A contract is not vitiated because it was induced by a threat of criminal proceedings, for which there was sufficient ground, provided there is no agreement to stifle the prosecution.—BOW *v.* PEARSON & GARDNER, [1924] 2 D. L. R. 854; 2 W. W. R. 1149.—CAN.

2098 iv. ———.] D. was in the employ of pltfs. & was charged with criminal breach of trust in respect of a cheque for Rs.30,000 which he cashed for pltfs. D. paid pltfs. Rs.15,000, & D. & his brother R. executed a mtge. in favour of pltfs. with a view to withdrawal of the prosecution. Pltfs. put in a petition stating the facts, & the prosecution was dropped:—*Held:* the agreement was not against public policy.—DWARKA NATH MULLICK *v.* GOPIRAM GOBINDARAM (1925), I. L. R. 53 Calc. 51.—IND.

PART VI. SECT. 4, SUB-SECT. 5.—G.

2120 i. *Promise married Promise to marry conditioned on divorce.*]—Where a promise of marriage was made after the hearing of a petition for divorce, but before the passage of the bill of divorce:—*Held:* any promise of marriage to be performed contingently upon a divorce being obtained was against public policy, & no action could be maintained thereon.—CASTELLAIN *v.* ARNOLD (No. 1), [1925] 1 D. L. R. 293; [1925] 1 W. W. R. 664; 34 B. C. R. 404.—CAN.

PART VI. SECT. 4, SUB-SECT. 5.—H.

st. *Agreement for support of adulterine bastard.*]—*Held:* a contract by a third party to pay the mother for the support of a child alleged by her to be the result of adultery with him while she was living with her husband is against public policy, void & unenforceable.—KIJKO *v.* BACZEWSKI (1922), 51 O. L. R. 225.—CAN.

PART VI. SECT. 5, SUB-SECT. 1.

2300 iii. ———.] If a person contracting to operate a boiler & engine has not a certificate or permit under Boilers Act, R. S. A., 1922 (c. 191), authorising him to operate that particular kind of boiler & engine, the contract is prohibited by the Act, & is unenforceable, & such person is not entitled to recover on a *quantum meruit*.—MILNE *v.* PETERSON, [1925] 1 D. L. R. 271; [1924] 3 W. W. R. 951.—CAN.

PART VI. SECT. 7, SUB-SECT. 1.

c. *Reversed sub nom.* DOMINION FIRE INSURANCE CO. *v.* NAKATA, 52 S. C. R. 294; 26 D. L. R. 722.

PART VI. SECT. 9, SUB-SECT. 1.—C. (b).

2318 iii. ———.]—*Held:* while money paid for an illegal purpose might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—CAN.

2318 iv. ———.]—*Held:* where an executory contract is made for illegal sale of goods & the contract has not been carried out but remains totally unperformed, it is open to a party to repudiate the illegal contract & on avoidance to recover any moneys deposited.—HIRJEE DEVRAJ & CO. *v.* MAUNG LYUN SHEIN (1924), I. L. R. 2 Ran. 414.—IND.

sw. *Pleading.*]—Where a suit, brought on a contract for illegal sale of goods, was framed for enforcement of the contract & not for damages for breach:—*Held:* a decree for repayment of the money paid could not be passed, unless the plaint was amended.—HIRJEE DEVRAJ & CO. *v.* MAUNG LYUN SHEIN (1924), I. L. R. 2 Ran. 414.—IND.

PART VI. SECT. 9, SUB-SECT. 1.—C. (c) i.

2326 iv. ———.]—*Pltf.*, an insurance agent, induced deft. to apply for insurance on the promise that he would share his commission with deft.;—*Held:* the promise to share commission was prohibited by Insurance Act, 1917 (Can.), & the transaction was illegal.—BRANNEGAN *v.* ERICKSON, [1921] 1 W. W. R. 834; 56 D. L. R. 616.—CAN.

2326 v. ———.]—*Held:* while money paid for an illegal purpose might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—CAN.

College of Ambulance & Harrison (1924), 40 T. L. R. 886.

). The cross-reference following this case should follow No. 2350.

2372. *Add. Annotation* :—**Reld.** Parkinson v. College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2375. *Add. Annotation* :—*As to* (1) **Reld.** Thompson v. British Medical Assocn. (New South Wales Branch), [1924] A. C. 764.

2426. *Add. Annotation* :—**Mentd.** Calthorpe v. McOscar, [1923] 2 K. B. 573.

2454. *Add. Annotation* :—**Reld.** Greenberg v. Cooperstein, [1926] Ch. 657.

2456. *Add. Annotation* :—**Reld.** Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

2501. *Add. Annotation* :—**Mentd.** Pirie v. Richardson (1926), 70 Sol. Jo. 1023.

Part VII.—Performance and Excuses for Non-Performance.

2505a. —— **" Unforeseen contingencies —Goods obtainable from source not contemplated by sellers.)**—A contract provided for delivery of goods " unforeseen ies excepted." No particular which they were to come was sti Unforeseen political complications prevented the supply of the goods from the source contemplated by the sellers, but it was not shown that the goods could not have been procured other sources: *Held*: the above did not protect the sellers from li

SONS, LTD. v. CUNNINGHAM (R. S.) SON & Co., [1924] 2 K. B. 220; 93 L. J. K. B. 1008; 131 L. T. 400; 40 T. L. R. 108.

2523. *Add. Annotation* : **Mentd.** Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455.

2544. *Add. Annotations* :—**Reld.** Cantiere Navale Triestina v. Russian Soviet Naphtha Export cy, [1925] 2 K. B. 172; Hogarth v Cory 95 L. J. P. C. 204; United States Shipping Board v. Strick, [1926] A. C. 545; Vergottis v. Cory (1926), 95 L. J. K. B. 1002.

2545. *Add. Annotations* :—**Reld.** Rederi Akt. Ac v. Hillas (1925), 42 T. L. R. 60; United Stat Shipping Board v. Strick, [1926] A. C. 545.

2547. *Add. Annotations* :—**Consd.** Verelst's Administratrix v. Motor Union Insce., [1925] 2 K. B. 137. **Mentd.** Transoceanica Soc. Italiana Di Navigazione v. Shipton, [1923] 1 K. B. 31; R. v. Roberts, *Ex p.* Scurr, [1924] 2 K. B. 695.

2553. *Add. Annotation* : —**Consd.** Verelst's Administratrix v. Motor Union Insce., [1925] 2 K. B. 137.

2576. *Add. Annotation* :—**Mentd.** Ballantine v. Tramp & Bosman (1923), 129 L. T. 502.

2607. *Add. Annotation* : **Distd.** *Re* Wait, [1926] Ch. 962.

2624. *Add. Annotation* :—**Consd.** Martin v. Stout, [1925] A. C. 359.

2737. *Add. Annotation* : —**Reld.** Bradford v. Price (1923), 92 L. J. K. B. 871.

2738. *Add. Annotation* : **Reld.** Cohen v. Rocho (1926), 95 L. J. K. B. 915.

2825. *Add. Annotation* : —**Reld.** British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.

2828. *Add. Annotation* : —**Reld.** British &

3] A. C.

2829a. **Subsequent agreement unenforceable at**

PART VI. SECT 9, SUB-SECT. 1.—D.

2373 i. *Damages for breach.*)—Plff.

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nit Act, 1918, s. 6, of
f. was ignorant :—*Held* might either (1) sue on

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VI. SECT. 9, SUB-SECT. 3.

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repudiation of the contract.—BRANIGAN v. SABA, [1923] N. Z. L. R. 97.—N.Z.

PART VII. SECT. 1.

c. d., 51 D. L. R. 509.

PART VII. SECT. 2, SUB-SECT. 1.

iv. ——.]—Where W.

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PART VII. SECT. 3, SUB-SECT. 1.—A.

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PART VII. SECT. 3, SUB-SECT. 2.—D. (b).

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PART VII. SECT. 3, SUB-SECT. 2.—G.

2820 iii. ——.]—Where the o
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OF SOUTH CANTERBURY, LTD., (1922) N. Z. L. R. 2; Gaz. L. R.

law.]—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., No. 4. *ante.*

2830. *Add. Annotation:*—**Apprvd.** Martin *v.* Stout, [1925] A. C. 359.

2831. *Add. Annotations:*—**Refd.** The British Trade, [1924] P. 104; Berners *v.* Fleming, [1925] Ch. 264.

2832. *Add. Annotation:*—**Mentd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2832a. —— ——.]—Under agreements made in 1923 & 1925, pltfs. were granted the right to occupy sufficient land of defts. for the purpose of constructing & working a railway until the termination of the exhibition to be held on the grounds of defts. at W. during 1924 & 1925, whereupon pltfs. were to be at liberty to sell all their property & other assets at W. to a purchaser to whom defts. agreed to grant an option to occupy the land for the further period of one year thereafter & a further option to continue such occupation from year to year for a total period not exceeding six years from the closing of the exhibition. Pltfs. constructed a railway on the ground of defts., & worked it until the closing of the exhibition on Oct. 31, 1925. On Dec. 30 defts. purported to terminate their agreements with pltfs. on the ground that same had lapsed owing to pltfs.' delay in exercising the option of calling for a renewal of the licence to occupy defts.' land in favour of a purchaser of the railway undertaking: *Held:* by purporting to terminate the agreements defts. had committed an anticipatory breach thereof, & pltfs. were entitled to damages. NEVER-STOP RY. (WEMBLEY) *v.* BRITISH EMPIRE EXHIBITION (1924) INCORPORATED, [1926] Ch. 877; 95 L. J. Ch. 111; 135 L. T. 105; 70 Sol. Jo. 735.

2835. *Add. Annotations:*—**Consd.** Martin *v.* Stout, [1925] A. C. 359. **Refd.** Tyldesley U. D. C. *v.* Leigh R. D. C. (1925), 23 L. G. R. 243. **Mentd.** *Re* City Life Assce., [1926] Ch. 191.

2835a. ——.]—A party to a contract who desires to avail himself of an act of repudiation by the other party must evidence his election to do so with every reasonable dispatch. BERNERS *v.* FLEMING, [1925] 1 Ch. 264; 94 L. J. Ch. 273; 132 L. T. 822, C. A.

Annotation:—**Refd.** Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

2841. *Add. Annotations:*—**Refd.** Berners *v.* Fleming, [1925] Ch. 264; Martin *v.* Stout, [1925] A. C. 359; Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877. **Mentd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 1 Ch. 342.

2847. *Add. Annotation:*—**Refd.** Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

2888. *Add. Annotation:*— **Mentd.** Thomas *v.* Todd, [1926] 2 K. B. 511.

2896. *Add. Annotation:*—**Consd.** Meyrick *v.* Dyson (1925), 41 T. L. R. 368.

2899a. Effect of part-performance — Major part of consideration received.]—Pltf., a mental specialist, & the proprietor of a nursing home, sued deft. for medical attendance & board & lodgings of deft.'s son, a patient certified to be insane; & deft. counterclaimed for negligence & unskilful treatment. The jury found for pltf. on the claim; & on the counterclaim they awarded deft. 20s., finding that pltf. was guilty of negligence or breach of duty in not entering in a book the occasions when the patient was confined to a bedroom with the door locked, such entries being required by rr. 13 & 16 of the rules made by the Comrs. in Lunacy under Lunacy Act, 1890 (c. 5), s. 338:—*Held:* as

PART VII. SECT. 6, SUB-SECT. 3. — A. (a) i.

2833 viii. .] Although repudiation by a party to a contract of sale entitles *de facto* the other party to recover damages thus incurred, the vendor has the right to insist on preserving the integrity of the contract & to tender the goods for delivery according to the terms of the sale, in which case his claim for damages will be more easily & readily assessed upon refusal to accept by the buyer. BRILLIANT SILK MANUFACTURING CO. *v.* KAUFMAN, [1925] 2 D. L. R. 91; [1925] S. C. R. 249. **CAN.**

2838 i a. — .] Where the conduct of one of the parties to a contract has been such as would lead a reasonable person to the conclusion that he does not intend to fulfil his part of the obligation, the other party to the contract, whatever in fact may have been the actual intention of the former, may treat such conduct as an intimation that the contract has been repudiated. - FARMILO, PTY. *v.* HENDERSON & MUNDELL, [1922] S. C. (H. L.) 173. **SCOT.**

2838 v. — —.] - On the facts: - *Held:* deft. did not refuse to carry out the real contract & what he did in the circumstances did not amount to a repudiation of the real contract so as to entitle pltf. to terminate it. - FREEMAN *v.* FRANCH (1921), 50 O. L. R. 432. **CAN.**

2838 vi. — —.] -If a party declares his intention not to be further bound by a contract, this is an anticipatory breach upon acceptance by the other party. It does not matter that the party so declaring is misinstructed at the time as to the facts upon which he bases such declaration. - CLAUSEN *v.* CANADA TIMBER & LANDS, LTD., [1923] 4 D. L. R. 751. - **CAN.**

2838 vii. — .]—Where a buyer knowing that the seller could not deliver, failed to pay the deposit agreed upon: *Held:* not a breach of contract not repudiation. - TOWNSEND *v.* MOON MOTOR CO., [1924] 1 D. L. R. 511. - **CAN.**

2838 viii. — — *Partial non-performance. Agreement substantially performed.*] By a tripartite agreement between the two appts., A. & B., & resp., it was agreed that A. should grant a sub-lease of one theatre to resp., that B. should grant a lease of another theatre to resp., & that resp. should grant a sub-lease of a third theatre, including all offices, to B. The parties entered into possession, except that B. was excluded from a room which appts. alleged to be an office which B. was entitled to under the agreement: *Held:* the possession of the office was not essential to the use of the premises as a theatre, & a refusal to give it did not entitle appts. to rescind. - FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

PART VII. SECT. 6, SUB-SECT. 3.— A. (a) ii.

2838 ix. *Contract by correspondence — Refusal to sign formal contract.*]—Certain correspondence & memoranda were relied on by pltfs. to prove an agreement by defts. Subsequently a formal contract was sent to defts., which they refused to sign, objecting to its terms: - *Held:* assuming that the previous documents were sufficient to establish a contract, the terms of the proposed formal contract modified materially to defts.' prejudice the previous undertaking as to time of shipment, & defts. had rejected it & clearly intimated their intention to consider the contractual relations at an end, which they were entitled to do. — FUJITA & CO., LTD. *v.* NORTHERN FRUIT CO., LTD., [1923] 1 D. L. R. 402; 16 Sask. L. R. 414; [1923] 1 W. W. R. 59. - **CAN.**

PART VII. SECT. 6, SUB-SECT. 3.— A. (a) iii.

2851 ii. ——— — — —.]—Pltf. contracted with deft. for advertising & agreed to pay a weekly rent in advance, if the rent fell into arrears, the agreement to be cancelled. In an action for breach of agreement, deft. pleaded that the contract had been avoided by pltf.'s default in payment of rent:—*Held:* pltf.'s default did not *ipso facto* avoid the contract, & in the absence of an allegation that pltf. had elected to treat the contract as void, the plea was bad.— MANNINGTON *v.* CLIFFORD (1921), 17 Tas. L. R. 13.— **AUS.**

PART VII. SECT. 6, SUB-SECT. 3.— A. (c).

sb. *Provision in contract for liquidated damages.*]— A clause in an agreement provided that a certain sum of money to be paid by resp. should be treated as the amount of compensation in case of his failure to carry out the contract:—*Held:* not to authorise resp. to determine the agreement by a notice to determine & an offer to pay that sum.— FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524. —**AUS.**

deft. had received a substantial part of the consideration, pltf.'s breach of duty did not go to the root of the contract so as to be a defence to pltf.'s entire claim, & judgment must be entered in accordance with the verdict.—MEYRICK *v.* DYSON (1925), 41 T. L. R. 368; *subsequent proceedings*, 41 T. L. R. 575, C. A.

2941. *Add. Annotation:*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2945. *Add. Annotations:*—**Apld.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48; Rose & Frank Co. *v.* Crompton, [1925] A. C. 445.

2958a. *Add. Citation:*—28 Com. Cas 205.

Add. Annotation:—*As to* (1) **Consd.** Rose & Frank Co. *v.* Crompton, [1925] A. C. 445.

2963. *Add. Annotation:*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2964. *Add. Annotation:*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2965. *Add. Annotation:*—**Refd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

2967. *Add. Annotation:*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2970. *Add. Citation:*—28 Com. Cas. 214.

2975. *Add. Annotations:* **Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287; Berners *v.* Fleming, [1925] Ch. 264.

3033. *Add. Annotation:*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

3040. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Bax (1925), 70 Sol. Jo. 209.

3052. *Add. Annotation:*—**Mentd.** Cory *v.* Davies, [1923] 2 Ch. 95.

3090. *Add. Annotations:*—**Refd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671. **Mentd.** Edwards *v.* Birmingham Navigations Co. of Proprietors, [1924] 1 K. B. 341; Noble *v.* Harrison, [1926] 2 K. B. 332.

3090a. For the existing paragraph substitute the following paragraph:—

—— **Absolute contract.**]—By a contract dated Aug. 16, 1922, the sellers sold to the purchasers about one thousand boxes of Smyrna sultanas at 60*s.* a cwt. c.i.f. London, to be shipped from Smyrna by steamer to London during Sept. 1922. Smyrna at the date of the contract was in the occupation of the Greeks. On Sept. 9, 1922, it was taken by Turkish forces & shipment became impossible, with the result that the sellers did not ship any of the goods. The buyers claimed damages, & the dispute went before arbitrators, who stated a case for the opinion of the ct. under Arbn. Act, 1889 (c. 49), s. 7. The sellers said that they were excused from performance on the grounds (1) that the contract became illegal when the port of shipment came under Turkish control, as a state of war at that time existed between England & Turkey; & (2) that a state of circumstances had arisen which made the contract impossible of performance & that differed totally from the conditions with reference to which the contract was made:—*Held:* mere impossibility of performance did not discharge a party where performance was not naturally impossible, unless such a state of affairs had arisen as displaced the fundamental basis of the contract: in the absence of any strike, war or *force majeure* clause, the buyers were entitled to damages for failure of the sellers to deliver.—SARGANT (W. J.) & SONS *v.* PATERSON (ERIC) & CO. (1923), 129 L. T. 471; 39 T. L. R. 378.

3093. *Add. Annotations:*—**Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 155; Kursell *v.* Timber Operators & Contractors (1920), 95 L. J. K. B. 569; *Re* Wait, [1926] Ch. 962.

3094a. ——.] SARGANT (W. J.) & SONS *v.* PATERSON (ERIC) & CO., No. 3090a, *ante*.

3095. *Add. Annotations:*—**Refd.** Cantiere Navale Triestina *v.* Handelsvertretung der Russo Soz. Fod. Naphtha Export (1925), 91 L. J.

PART VII. SECT. 6, SUB-SECT. 3.—C.

2900 v. ——.]—Where applt. had an election to rescind:—*Held:* he had by his conduct in going on with the agreement & taking advantage under it, irrevocably exercised his election to affirm the agreement.—FULLER'S THEATRES, Ltd. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

2900 vi. ——.]—Defts. ordered certain goods manufactured by pltfs. With some trifling exceptions all the goods were in accordance with the requirements of the contract & reasonably fit for the purpose for which they were supplied. Some of the goods were returned & an adjustment made concerning them:—*Held:* defts. had waived any right they might have had to repudiate the contract because of the delivery of defective goods.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—D.

se. *Contract absolutely terminated.*]—Where there was a distinct & unequivocal refusal by pltfs. to perform their contract:—*Held:* so long as defts. were continuing to urge or demand compliance with the contract, it could not be said to have been terminated, but where finding that pltfs.' attitude was unalterable, defts. decided to acquiesce in it, & communicated such acquiescence to pltfs., the contract between the parties was put an end to.—JHANDOO MAL JAGAN NATH *v.* PUHL CHAND-FATIN CHAND (1924), I. L. R. 5 Lah. 497.—**IND.**

sd. *Collateral contract not terminated.*]—MURRAY *v.* DELTA CORTEN CO., LTD., [1925] 4 D. L. R. 1061. **CAN.**

PART VII. SECT. 6, SUB-SECT. 4.

se. *Agreement under seal.*]—Long delay in bringing action cannot defeat the enforcement of an agreement under seal where the twelve years specified by Stat. Limitations have not expired.—MCCORMACK *v.* ROBINSON, [1924] 3 D. L. R. 676; 2 W. W. R. 1116. **CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) ii.

e i. ——.]—A contract required to be in writing cannot be varied by a new oral agreement, even if the variation relates to a part of the contract which, if it stood by itself, would not be required to be in writing.—NUGENT *v.* DAVIES, [1923] 1 D. L. R. 1040; 53 O. L. R. 456.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—C. (a).

sf. *What amounts to.*]—Where a clause in an agreement provided that a certain sum of money should be treated as the amount of compensation if the contract was not carried out:—*Held:* the giving of such an offer & notice to determine the agreement did not constitute a rescission by mutual consent.—FULLER'S THEATRES, Ltd. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

PART VII. SECT. 7.

ak. *Distinguished from rescission.*]—There is a difference between conciliation & rescission. The logical consequences of true rescission are the returning by each party of the benefits he has received, or *restitutio in integrum*. Cancellation means determination of the contract without restitution.—PRIMEAU & IMPERIAL LUMBER YARDS, Ltd. *v.* MEAGHER, [1923] 4 D. L. R. 1096; 3 W. W. R. 130n. **CAN.**

PART VII. SECT. 8, SUB-SECT. 3.

al. *Substitution of party.*]—To effect a sale an agent decided to buy the article himself & then sell to the buyer. To do this he altered a contract by substituting his own name for that of his principal:—*Held:* the contract was avoided by this alteration.—ROYAL BANK OF CANADA *v.* FRANK, [1923] 4 D. L. R. 1213.—**CAN.**

am. *Addition of provision for payment of compound interest.*]—*Held:* an alteration in a material respect.—PARBATI CHARANMI MUKHOPADHYE *v.* AMARENDRA NATH BHATTACHARJEE (1925), 1 L. R. 53 Calc. 415.—**IND.**

K. B. 570; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

3101a. —— **All available shipping requisitioned.**]—In an action brought in Singapore in Aug. 1917, defts. counterclaimed damages for failure by pltf. to deliver sugar sold by him to be shipped & delivered at Bombay. The shipment of the sugar had been prevented by the requisitioning of ships by the British Govt.:—*Held:* Civil Law Ordinance No. III (Str. Sett. No. VIII. of 1909), s. 5 (1), which provides that in all questions which arise for decision in the Colony "with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, unless in any case other provision is, or shall be made, by statute," made Defence of the Realm Amendment Act No. 2, 1915 (c. 37), & Courts (Emergency Powers) Act, 1917 (c. 26), applicable to the case, & the latter Act gave a good defence to the counterclaim whether the requisitioning was under Defence of the Realm Act, 1914 (c. 29), or under the prerogative power.—SENG DJIT HIN *v.* NAGURDAS PURSHOTUMDAS & Co., [1923] A. C. 444; 92 L. J. P. C. 141; 128 L. T. 780; *sub nom.* HIN *v.* PURSHOTUMDAS & Co., 39 T. L. R. 226, P. C.

3106. *Add. Annotation:*—**Mentd.** Harper *v.* Hedges, [1923] 2 K. B. 314.

3115. *Add. Annotation:*—**Consd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3149. *Add. Annotation:*—**Apld.** *Re* Wait, [1926] Ch. 962.

3157. *Add. Annotation:*—**Mentd.** Sweet *v.* Williams (1922), 128 L. T. 379.

3162. *Add. Annotation:*—*As to* (3) **Apld.** Sargant *v.* Paterson (1923), 129 L. T. 471.

3166. *Add. Annotations:* **Reld.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

3168. *Add. Annotations:*—**Reld.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Cohen *v.* Sellar, [1926] 1 K. B. 536.

3170. *Add. Annotation:*—*As to* (2) **Reld.** The Lord Strathcona, [1925] P. 143.

3172a. —— .]—(1) By a charterparty made in Nov. 1916, respts. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her:—*Held:* there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract.

(2) The legal effect of the frustration of a contract does not depend upon the intention of the parties, or their opinions or even knowledge, as to the event which has brought about the frustration, but upon its occurrence in such circumstances as to show it to be inconsistent with the further prosecution of the adventure.—HIRJI MULJI *v.* CHEONG YUE S.S. Co., [1926] A. C. 497; 95 L. J. P. C. 121; 134 L. T. 737; 42 T. L. R. 359; Asp. M. L. C. 8; 31 Com. Cas. 199, P. C.

3175. *Add. Annotation:*—**Reld.** Hirji Mulji *v.* Cheong Yue S. S. Co., [1926] A. C. 497.

3177. *Add. Annotation:*—**Reld.** Paterson Zochonis *v.* Elder Dempster, [1923] 1 K. B. 420.

3179. *Add. Annotation:*—**Reld.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3181. *Add. Annotation:*—**Consd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3182. *Add. Annotation:*—**Distd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3183. *Add. Annotation:*—**Distd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3183a. —— —— **Ship ordered to leave port—Subsequent permission to return & load.**]—A charterparty of an Italian ship provided that 216 running hours, Sundays & holidays excepted, weather permitting, should be allowed the charterers for loading & discharging, & that the lay days should commence from the time the steamer was ready to receive or discharge her cargo, the captain giving six hours' notice to the charterers' agents, berth or no berth. The exceptions clause excepted "restraint of princes, rulers & people." The ship arrived at Batoum, & notice of readiness to load was given, & the lay days began to run. Owing, however, to a dispute between the Russian & Italian Govts. the ship was ordered by the port authorities to leave Batoum & also Russian waters, & accordingly the ship went to Constantinople. Subsequently permission was obtained to load the ship at Batoum, & she returned after being absent from the port a little over a fortnight. The owners subsequently claimed demurrage from the charterers, on the basis that the lay days continued to run during the period the ship was absent from Batoum:—*Held:* interference by the Russian Govt. did not amount to such an illegality as to excuse the performance of the contract.—CANTIERE NAVALE TRIESTINA *v.* HANDELSVERTRETUNG DER RUSS. SOZ. FOD. SOVIET REPUBLIK NAPHTHA EXPORT, [1925] 2 K. B. 172; 94 L. J. K. B. 579; 133 L. T. 162; 41 T. L. R. 355; 69 Sol. Jo. 443; 16 Asp. M. L. C. 501; 30 Com. Cas. 172, C. A.

3184. *Add. Annotation:*—**Reld.** Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

3185. *Add. Annotations:*—**Reld.** Sargant *v.* Paterson (1923), 129 L. T. 471; Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

3188. *Add. Annotations:*—**Consd.** Snia Soc. di Navigazione Industria e Commercio *v.* Suzuki (1924), 20 Com. Cas. 284; Cantiere Navale Triestina *v.* Handelsvertretung der Russ. Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579.

3189. *Add. Citations:*—92 L. J. K. B. 455; 129 L. T. 65; 16 Asp. M. L. C. 133; 29 Com. Cas. 1.
Add. Annotation:—**Reld.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

3194. *Add. Annotation :*—**Consd.** Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455.

3198. *Add. Annotations :*—*As to* (1) **Apld.** Snia Soc. di Navigazione Industria e Commercio v. Suzuki (1924), 29 Com. Cas. 284; *As to* (2) **Apld.** Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497. *Generally*, **Refd.** Cohen v. Sellar, [1926] 1 K. B. 536.

3199. *Add. Annotation :*—*As to* (1) **Refd.** Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co., [1924] A. C. 226.

3199a. — — — —.] —Hirji Mulji v. Cheong Yue S.S. Co., No. 3172a, *ante*.

3201. *Add. Annotation :*—**Refd.** Benaim v. Debono, [1924] A. C. 514.

3202. *Add. Annotation :*—*As to* (2) **Consd.** Cantiere Navale Triestina v. Handelsvertretung der Russ. Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579.

3206. *Add. Annotation :* **Refd.** Cayzer, Irvine v. Board of Trade (1926), 95 L. J. K. B. 1051.

3211. *Add. Annotation :*—*As to* (1) **Refd.** Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455.

3218. *Add. Annotation :*—*Generally*, **Mentd.** Tournier v. National Provincial & Union Bank of England, [1924] 1 K. B. 461.

3225a. Confiscation by foreign Government.] By a contract the vendors agreed to sell & the purchasers to purchase the timber then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated :—*Held :* the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it. —Kursell v. Timber Operators & Contractors (1926), 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.

3226. *Add. Annotation :*—**Refd.** Kursell v. Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

3233. *Add. Annotations :*—*As to* (2) **Consd.** Cantiere Navale Triestina v. Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579 **Refd.** Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Kursell v. Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

3238. *Add. Annotation :* **Refd.** Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522.

3239. *Add. Annotation :* **Refd.** Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522.

3240. *Add. Annotation :* **Refd.** Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522.

3243. *Add. Annotation :* **Refd.** Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522.

3282. *Add. Annotations :*—**Consd.** Cantiere San Rocco S. A. v. Clyde Shipbuilding & Engineering Co., [1924] A. C. 226. **Refd.** Cohen v. Sellar, [1926] 1 K. B. 536.

3327. *Add. Annotations :*—*As to* (5) **Apld.** Meyrick v. Dyson (1925), 41 T. L. R. 368. *Generally*, **Refd.** British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328.

3328. *Add. Annotations :* **Apld.** Baldry v. Marshall, [1925] 1 K. B. 260. **Mentd.** Szymonowski v. Beck, [1923] 1 K. B. 457; Lancaster v. Turner, [1924] 2 K. B. 222.

3447. *Add. Annotation :* **Refd.** Cohen v. Sellar, [1926] 1 K. B. 536.

3487. *Add. Annotations :* **Refd.** British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48; Never-Stop Ry. (Wembley) v. British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

3490. *Add. Annotation :*—**Refd.** British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.

3494. *Add. Annotations :*—**Refd.** United States Shipping Board v. Durrell, [1923] 2 K. B. 739; Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co., [1924] A. C. 406; Cohen v. Sellar, [1926] 1 K. B. 536.

PART VII. SECT. 9, SUB-SECT. 3.—B.

3194 l. *Time charter—Ship requisitioned by Government.*]—*Held :* a condition was not to be implied in the contract that an interruption should excuse the party from the further performance of it, unless substantially the whole contract became impossible of performance.—Dominion Coal Co. v. Lord Strathcona S.S. Co., [1924] 2 D. L. R. 60; 57 N. S. R. 113.—CAN.

PART VII. SECT. 9, SUB-SECT. 3.—C.

3204 v. *Revsd.*, [1924] A. C. 226.

3217 l. —— *Difficulties in way of shipment.*]—By a contract, made in 1916, defts. sold certain goods, shipment to be from a continental port in six approximately equal monthly parcels :—*Held :* the long delay in shipment caused by war did not frustrate the commercial object of the contract & so put an end to it.—Rivostad v. Collin & Co. Proprietary, Ltd. (1925), 35 C. L. R. 303; 31 Argus L. R. 221.—AUS.

PART VII. SECT. 9, SUB-SECT. 5.

11. —— *Lease of hotel.*]—The lessees of an hotel property, upon prohibition coming into force in Alberta, sued for a declaration that the lease of the premises & an agreement to purchase the chattels in the hotel were terminated through failure to obtain a licence :—*Held :* the abolition of the bar was a risk that must be undertaken by the lessee, it being a case not of total destruction of the subject-matter, but a case of sterility.—Cherrier & Orion v. McKnight & Pennington, [1917] 2 W. W. R. 8; 11 Alta L. R. 270; 33 D. L. R. 669.—CAN.

PART VII. SECT. 9, SUB-SECT. 6.

3278 l. *Revsd.*, [1924] A. C. 226.

PART VII. SECT. 11, SUB-SECT. 1.—A.

an. *Receipt of money — Duty to collect.*]—A contract provided for a percentage of the moneys received by one party to be paid to the other :—*Held :* liability could not be evaded by failure to collect the moneys; but where there was good reason to suppose that litigation for the purpose of collection would be useless, there was no duty to litigate.—Northern Pipe Line Co. v. Canadian Gas Co., [1924] 4 D. L. R. 1111.—CAN.

PART VII. SECT. 11, SUB-SECT. 1.—D. (q).

so *Timber licence. Condition against employment of Chinese or Japanese.*]—A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is one of the essential terms of the licence.—A.-G. for British Columbia v. Brooks, Bird & Co., [1922] 3 W. W. R. 9, 63 S. C. R. 466.—CAN.

PART VII. SECT. 11, SUB-SECT. 3.—A. (b).

p l. ——.]—The consideration for a quit-claim deed was the maintenance of the grantor & pltf. during their lives. After the death of the grantor, deft. married, & pltf. left & lived elsewhere :—*Held :* as it was clearly meant that pltf. would live in deft.'s house & be maintained there by him, & as she had no valid excuse for leaving

3495. *Add. Annotation :*—**Refd.** United States Shipping Board *v* Durrell, [1923] 2 K. B. 739.

3500. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

3508. *Add. Annotation :*—**Distd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

3509. *Add. Annotation :*—**Refd.** Samuel *v.* Dumas, [1924] A. C. 431.

3513. *Add. Annotations :*—**Consd.** Acties Nord-Osterso Rederiet *v.* Casper, Edgar (1923), 28 Com. Cas. 222. **Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

3514. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* Chekiang (Owners), [1926] A. C. 637.

3520. *Add. Citation :*—*Revsd. sub nom.* NICHOLS *v.* NORTH METROPOLITAN RAILWAY & CANAL CO. (1894), 71 L. T. 836, C. A.

Part VIII.—Defences to Actions for Breach of Contract.

3561. *Add. Annotations :*—**Consd.** Rose & Frank Co. *v.* Crompton, [1925] A. C. 445. **Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

3569. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3622. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3641. *Add. Annotations :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612. **Refd.** Barclay *v.* Malcolm (1925), 133 L. T. 512.

3646. *Add. Annotations :*—*As to* (1) **Refd.** *Re* British American Continental Bank, Lisser & Rosenkranz's Claim, [1923] 1 Ch. 276; *Re* Chesterman's Trusts, Mott *v.* Browning, [1923] 2 Ch. 466; Peyrac *v.* Wilkinson, [1924] 2 K. B. 166.

3763. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3781. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3784. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3784a. ——.]—HALL *v.* PADLEY (1923), 156 L. T. Jo. 83.

3784b. ——.]—Pltf. granted a bill of sale over certain furniture to a moneylender, &, as she was unable to pay him the first instalment when it became due, defts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from defts. & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain defts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on Bills of Sale (1878) Amendment Act, 1882 (c. 43), s. 8, & she contended that the real consideration was the payment off of the moneylender & the release of her furniture from the first bill of sale :—*Held :* the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—D'USEZ *v.* TRAFFICS & DISCOVERIES, LTD. (1924), 40 T. L. R. 441.

3784c. ——.]—If a bill of exchange or note be taken on account of a debt & nothing be said at the time, the legal effect of the transaction is that the original debt remains, but the remedy for it is suspended till the maturity of the instrument in the hands of the creditor. If the bill or note is given not by the debtor but by a stranger, the action for the original debt is equally suspended.—ALLEN *v.* ROYAL BANK OF CANADA (1925), 95 L. J. P. C. 17; 134 L. T. 191; 41 T. L. R. 625, P. C.

3806. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

him, deft. was not obliged to provide for her support elsewhere.—COMEAU *v.* LEBLANC, [1923] 2 D. L. R. 1076; 56 N. S. R. 201. **CAN.**

PART VII. SECT. 11. SUB-SECT. 3. A. (c).

3509 i. *What amounts to waiver.*]—BOWES *v.* CHALEYER, [1923] V. L. R. 295, 32 C. L. R. 159. **AUS.**

PART VII. SECT. 11, SUB-SECT. 3.—C.

3521 i. *Right of defaulting party to sue other party—Recovery of deposit.*]—Defts. contracted to supply pltf. with a quantity of lumber to be loaded on cars in July, 1920. Defts. hauled the lumber to the railway siding ready for shipment, but pltf. failed to provide cars, as it was his duty to do, upon which the lumber could be loaded :—*Held :* an action by pltf. to recover a deposit paid on the contract must be dismissed.—GLENNIE *v.* RICHARDS (1923), 55 N. S. R. 530.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—A.

3547 ii. ——.]—Prior to foreclosure proceedings on a mtge. given by deft., pltf.'s solr. wrote deft.'s solr. that the registered owner was willing to give a quit-claim deed to pltf. to clear up the title & avoid litigation if deft. would give a quit-claim deed to pltf. This was agreed to, but subsequently deft.'s solr. received a letter from pltf.'s solr. purporting to withdraw from all negotiations to accept a quit-claim deed :—*Held :* there was an accord but no satisfaction.—CAIRNS *v.* BROWN, [1924] 4 D. L. R. 590; 3 W. W. R. 409.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 4.

3655 viii. ——.]—If there is no special covenant for payment of a debt elsewhere, the presumption of law is that the borrower ought to seek out the lender for payment.—GOKUL DAS *v.* NAMU (1925), I. L. R. 48 All. 310.—**IND.**

3658 i. ——— *Unless creditor abroad.*]—The duty which English law imposes upon a debtor to find his creditor & pay him is imposed upon him only if the creditor is within the realm. If in India a debtor is subject to the same duty, it is similarly limited.—DANSILAL AMRITLAND *v.* GHULAM MAHBUB KHAN (1925), 53, L. R. Ind. App. 68. **IND.**

PART VIII. SECT. 3, SUB-SECT. 5.—F.

sp. *Manager of debtor agent of creditor—Fraudulent entry of payment.*]—McMORRIS *v.* EMPRESS THEATRE CO., LTD., [1923] 2 D. L. R. 555; 16 Sask. L. R. 504; [1923] 1 W. W. R. 1144.—**CAN.**

PART VIII. SECT. 3, SUB-SECT 5.—G. (b) i.

3766 iv. ——.]—RABINEAU *v.* BOURQUE, (1925) 1 D. L. R. 852.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 5.—G. (b) ii.

3793 i. *Acceptance in satisfaction question of fact.*]—The keeping & using of a cheque handed to a creditor on debtor's condition that it is to be taken in satisfaction of a claim for a larger amount, & with words on the cheque so intimating, is not conclusive in law of an accord & satisfaction; whether it was accepted in satisfaction of the claim is a question of fact.—PETERSON *v.* FLACK, (1923) 3 D. L. R. 132; 16 Sask. L. R. 493; [1923] 1 W. W. R. 1289.—**CAN.**

3813. *Add. Annotation :*—**Refd.** Jones v. Waring & Gillow, [1926] A. C. 670.

3817. *Add. Annotation :*—**Consd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

3818. *Add. Annotation :*—**Consd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

3833. *Add. Annotation :*—**Consd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

3874. *Add. Annotation :*—**Refd.** Abram S.S. Co. v. Westville Shipping Co., [1923] A. C. 773.

4059a. ——.]—FEENEY v. FIRBECK MAIN COLLIERIES, LTD., [1926] 2 K. B. 218; 95 L. J. K. B. 689; 134 L. T. 745; 19 B. W. C. C. 33, C. A.

4077. *Add. Annotation :*—**Refd.** Saunders v. Young's Brewery (1925), 42 T. L. R. 136.

4117. *Add. Annotations :*—**Mentd.** Jones (Holloway) v. Woodhouse, [1923] 2 K. B. 117; Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

4130. *Add. Annotation :*—**Refd.** Richmond v. Savill, [1926] 2 K. B. 530.

4286. *Add. Annotation :*—**Mentd.** New York Life Insce. v. Public Trustee (1924), 93 L. J. Ch. 449.

Part IX.—Constructive Contracts.

4325. *Add. Annotation :*—**Mentd.** Adams v. Morgan [1923] 2 K. B. 234.

4335. *Add. Annotation :*—**Mentd.** Adams v. Morgan [1923] 2 K. B. 231.

4340a. Double payment by bank to client's order.]—Pltfs., a London bank, on telegraphic instructions from a bank in Warsaw, which was acting for a Polish co., paid to defts. £2,000 on account of a sum of over £1,000 owed by the Polish co. to defts. The Warsaw bank then wrote a letter of confirmation, but pltfs. mistook the letter for a direction to pay defts. a further sum of £2,000 & did so. Afterwards the Polish co., believing the sum paid off to be £2,000, told the Warsaw bank to arrange for the payment of another £1,000, but the instructions accordingly sent by the Warsaw bank to pltfs. were lost in transmission & were never received. On discovering the facts pltfs. were willing to credit defts. with the above-mentioned £1,000 & brought an action to recover £1,000, the balance of the £2,000, as money paid under a mistake of fact:—*Held:* (1) there was no such mistake of fact as entitled pltfs. to maintain that the amount claimed was money paid to their use, & the action failed; (2) pltfs. had been negligent as between themselves & defts.—BARCLAY & Co., LTD. v. MALCOLM & Co. (1925), 133 L. T. 512; 41 T. L. R. 518; 69 Sol. Jo. 675.

4358a. Payment of rates on tithe rentcharge by occupier Demand after Tithe Act, 1891 (c. 8).]—At the date of the passing of the above Act rates upon a tithe rentcharge were due & in arrears, owing to the omission of the overseers to demand payment thereof from the occupiers of the land out of which the tithe rentcharge issued. The tithe rentcharge for the period in respect of which the rates in arrear were due had been paid to the tithe-owner in full. After the passing of the Act, the overseers, purporting to act under Tithe Act of 1837 (c. 69), s. 8, demanded payment of the arrears of rates from the occupiers of the land, who paid them, & were allowed the amount thereof by their landlord, the owner of the land, out of the half-year's rent next becoming due. Subsequently thereto a half-year's tithe rentcharge became payable by the landowner. The landowner claimed to deduct therefrom the amount which he had allowed to the occupiers out of their rent in respect of the arrears of rates paid by them: *Held:* having regard to the Act of 1891, s. 6, the payment of the arrears of rates by the occupiers was a voluntary payment, & they were not entitled to deduct the amount so paid from their rent; consequently the landowner was not entitled to deduct the amount which he had allowed to the occupiers from the tithe rentcharge due by him.—*Re* TITHE ACT, 1891, ROBERTS v. POTTS, JONES v. COOKE, [1894] 1 Q. B. 213; 58 J. P. 333; 42 W. R. 291; 9 R. 230;

PART VIII. SECT. 3, SUB-SECT. 7. A.

3876 i. *By debtor.*]—A debt owing from a creditor to his debtor cannot be considered as a payment by debtor until he consents to the creditor retaining it & applying it on his indebtedness.—MATTHEWSON v. THOMSON, [1925] 2 D. L. R. 1211; [1925] 2 W. W. R. 161; 19 Sask. L. R. 420. **CAN.**

3876 ii. ——.]—A person who pays money has a right to apply that payment to any of the debts which he owes.—ALBERT v. STOREY, [1925] 4 D. L. R. 374.—**CAN.**

3884 iii. ——.]—Where a debtor, who owes more than one debt to the same creditor, makes a payment without appropriating it towards the discharge of any particular debt, the right of the creditor to appropriate the amount paid towards any of the debts due to him continues up to the time when he applies the payment towards the discharge of a particular debt.—MAHUTY v. JAMESON (1925), I. L. R. 5 Pat. 326.—**IND.**

3884 iv. ——.]—Where a debtor owes several debts to one person & makes a payment to him, but has not taken advantage of the privilege conferred upon him by Indian Contract Act, s. 59, the creditor is at liberty to apply the payment in liquidation of any lawful debt actually due & payable to him from debtor.—BELU MAL v. AHMAD (1925), I. L. R. 7 Lah. 17. **IND.**

PART VIII. SECT. 3, SUB-SECT. 7.—C.

ni. ——.] *Running account.*]—PERRIN (J.), LTD. v. FRIZZLE, [1925] 4 D. L. R. 815. **CAN.**

PART VIII. SECT. 4, SUB-SECT. 5.—A.

4134 ii. ——.]—MORRIS v. MACKENZIE, [1925] 1 D. L. R. 801 **CAN.**

PART VIII. SECT. 4, SUB-SECT. 7.—A. (a).

4200 iii. ——.]—Where several debtors are bound jointly, a release given to one discharges the others, unless the creditor, when granting the release, reserves his right against them, this rule applies as much to a judgment debt as to any other obligation.—CARTER v. BISSET (1921), 50 O. L. R. 536. **CAN.**

PART VIII. SECT. 4. SUB-SECT. 9.

aq. *On security for debt.*]—The release of a debt operates as a release of any security held in respect of it.—A. G. v. SMITH & FRANCE, [1925] N. Z. L. R. 217.—**N.Z.**

PART IX. SECT. 1, SUB-SECT. 1.—C.

ai. *Payment to enable fulfilment of contract.*]—Where a timber contract contained the terms that Govt. & all other dues should be paid by the contractor, & defts. co. reserved the right to retain Govt. dues from the contractor until clearance had been furnished: *Held:* money paid by defts. co. to furnish the clearance was paid on behalf of the contractor to fulfil his contract & was chargeable against him.—KEANE v. CANADIAN PACIFIC RY. CO. (1921), 34 B. C. R. 127.—**CAN.**

sub nom. JONES v. PORTS, JONES v. COOKE, 63 L. J. Q. B. 381; 69 L. T. 849; 10 T. L. R. 111, C. A.

Annotation:—**Distd.** Lewis v. Hughes, [1916] 1 K. B. 831.

4359. For "—— **Payment to clear off maritime lien—No request from mortgagees**" read "**Payment to clear off maritime lien—No request from mortgagees.**"
Add. Annotation:—**Reld.** The St. George, [1926] P. 217.

4360 For "—— **Premiums on husband's life policy paid by wife—First life interest under settlement of policies taken by wife**" read "**Premiums on husband's life-policies paid by wife—First life interest under settlement of policies taken by wife.**"

4372. *Add. Annotation:*—**Reld.** Christoforides v. Terry, [1924] A. C. 566.

4377a. **Double payment by bank.**]—BARCLAY & Co., LTD. v. MALCOLM & Co., No. 4340a, *ante*.

4382. *Add. Annotation:*—**Consd.** Spencer v. Ashworth Partington, [1925] 1 K. B. 589.

4418. *Add. Annotation:*—**Dbtd.** Lowther v. Clifford (1926), 95 L. J. K. B. 576.

4435. *Add. Annotations:*—**Consd.** The Chekiang, [1925] P. 80. **Apprvd.** Admiralty Comrs. v. Chekiang (Owners), [1926] A. C. 637.

4437. *Add. Annotation:*—**Overd.** Spencer v. Ashworth Partington, [1925] 1 K. B. 589.

4438. After this case add "*See, further*, COMPANIES, Vol. IX., pp. 328-331."

4487. *Add. Annotations:*—**Reld.** Holt v. Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Bowling v. Cox, [1926] A. C. 751. **Mentd.** Boston Corpn. v. Fenwick (1923), 129 L. T. 766.

4523. *Add. Annotation:*—**Distd.** Jones v. Waring & Gillow, [1926] A. C. 670.

4534. *Add. Annotations:*—**Apld.** Holt v. Markham, [1923] 1 K. B. 504. **Reld.** Jones v. Waring & Gillow, [1926] A. C. 670.

4534a. —— ——.]—By certain military regulations officers in the Royal Air Force were on demobilisation entitled to a gratuity varying in amount according to circumstances. If their names were on a certain list, called the Emergency List, they were only entitled to a gratuity at a lower rate than if they were not on that list. Deft. was a demobilised officer of the Royal Air Force. Pltfs., who acted as Govt.'s agents for the payment (*inter alia*) of gratuities to demobilised officers of that force, in ignorance of the fact that deft. was on the Emergency List, but also in forgetfulness of the regulation which provided that the gratuities of officers on the Emergency List should be paid at the lower rate, & not appreciating the materiality of an officer being on that list, paid deft. his gratuity at the higher rate to which he would have been entitled if he had not been on that list. More than a year afterwards, & before notice of the mistake, deft. spent the money. In an action to recover back the excess payment as money paid under a mistake of fact:—*Held:* pltfs. could not recover on the grounds that pltfs.' mistake was not a mistake of fact causing the payment; & that as deft. had been led by pltfs.' conduct to believe that he might treat the money as his own, & in that belief had altered his position by spending it, pltfs. were estopped from alleging that it was paid under a mistake.—HOLT v. MARKHAM, [1923] 1 K. B. 504; 92 L. J. K. B. 406; 128 L. T. 719; 67 Sol. Jo. 314, C. A.

Annotations:—**Consd.** Jones v. Waring & Gillow, [1926] A. C. 670. **Mentd.** Ord. v. Ord, [1923] 2 K. B. 432.

4542. *Add. Annotations:*—*Generally*, **Reld.** Holt v. Markham, [1923] 1 K. B. 504; British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones v. Waring & Gillow, [1926] A. C. 670.

4563. *Add. Annotation:*—**Consd.** Jones v. Waring & Gillow, [1925] 2 K. B. 612.

4578. *Add. Annotation:*—**Reld.** Tournier v. National Provincial & Union Bank of England, [1924] 1 K. B. 461.

4583. *Add. Annotation:*—**Reld.** Underwood v. Bank of Liverpool & Martins, Same v. Barclays Bank, [1924] 1 K. B. 775.

4587. *Add. Annotation:*—**Reld.** Brocklebank v. R., [1925] 1 K. B. 52.

4590a. —— —— **To bank named by principal—Money returned by bank to agent.**]—Pltfs. in London sold to a New York co. a quantity of Belgian francs to be delivered to defts. as the purchasers' agents in Brussels on Dec. 31, at a price to be paid in dollars on the same day in New York, & the purchasers instructed defts. to pay the francs when received to the C. Bank. On Dec. 30 bkpcy. proceedings were commenced against the purchasers in New York & a receiver was appointed, & on the same day the purchasers cabled to pltfs. not to pay the francs to defts., as they, the purchasers, were unable to complete their contract. Before that cable arrived pltfs. had already paid the francs to defts., & defts. had paid them to the C. Bank. Pltfs. then requested the C. Bank to return them, & the C. Bank returned them to defts., with an explanation that they did so for the purpose of cancelling defts.' payment to them. In these circumstances defts. claimed that, the money having been returned to them, they were entitled to hold it on behalf of their principals, & refused to pay it over to pltfs., who brought an action to recover the francs as being money had & received by defts. to their use:—*Held:* (1) as at the time pltfs. paid the francs to defts. the purchasers had already repudiated their contract, although pltfs. did not know that fact & consequently had not accepted the repudiation, pltfs. were under no legal obligation to pay, &, having paid under a mistaken belief of legal liability, they would have been entitled to recover the money back if they had discovered their mistake before defts. had paid it to the C. Bank; (2) the effect of the money being returned by the C. Bank was to restore pltfs. to the same position as that which they occupied before defts paid it away, & that position was unaffected by the fact that before redemand of the money by pltfs. the trustee in bkpcy. of the purchasers had

directed defts. not to part with it, & defts. in compliance with that direction had credited the purchasers with it in their books; (3) defts. were bound to repay it to plffs.—BRITISH AMERICAN CONTINENTAL BANK v. BRITISH BANK FOR FOREIGN TRADE, [1926] 1 K. B. 328; 95 L. J. K. B. 326; 134 L. T. 472; 42 T. L. R. 202, C. A.

4597. *Add. Annotations:*—**Refd.** Abram S.S. Co. v. Westville Shipping Co., [1923] A. C. 773; Rowland v. Divall, [1923] 2 K. B. 500.

4598. *Add. Annotation:*—**Refd.** Abram S.S. Co. v. Westville Shipping Co., [1923] A. C. 773.

4635. *Add. Annotation:*—**Consd.** Brocklebank v. R., [1924] 1 K. B. 647.

4640. *Add. Annotations:*—**Consd.** Brocklebank v. R., [1925] 1 K. B. 52. **Refd.** Glamorgan County Council v. Glasbrook, [1924] 1 K. B. 879.

4644. *Add. Annotations:*—**Apld.** Marshal Shipping Co. v. Board of Trade, [1923] 2 K. B. 343. **Consd.** Brocklebank v. R., [1925] 1 K. B. 52. **Refd.** Glamorgan County Council v. Glasbrook, [1924] 1 K. B. 879.

4649. After this case add "**Payment as condition of licence to sell ship to foreigner.**]—*See* CONSTITUTIONAL LAW, pp. 280, 281, *ante*, Nos. 526a–526d, *ante*."

4678. *Add. Annotation:*—**Mentd.** Ord v. Ord, [1923] 2 K. B. 432.

4683. *Add. Annotation:*—**Mentd.** *Re* Letters Patent No. 139, 207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

4711. *Add. Annotation:*—**Mentd.** Ord v. Ord, [1923] 2 K. B. 432.

4716. *Add. Annotation:* **Refd.** London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.

4742. *Add. Annotation:*—**Consd.** Jones v. Waring & Gillow, [1925] 2 K. B. 612.

4751. *Add. Annotation:*—**Consd.** Jones v. Waring & Gillow, [1925] 2 K. B. 612.

4868. *Add. Annotation:*—*As to* (1) **Refd.** Thompson v. British Medical Assocn. (New South Wales Branch), [1924] A. C. 764.

Part X.—Personal Contracts.

4907. *Add. Annotation:*—**Refd.** Public Trustee v. Elder, [1926] Ch. 776.

Part XII.—Assignment of Contracts.

4956. *Add. Annotations:* **Refd.** Anderson v. Equitable Life Assce. Soc. of the United States (1926), 134 L. T. 557; Bennett v. Whitehead, [1926] 2 K. B. 380.

4957. *Add. Annotation:* **Refd.** Public Trustee v. Elder, [1926] Ch. 776.

4985. *Add. Citations:*—33 L. T. 760; *sub nom. Re* EUROPEAN ASSURANCE SOCIETY ARBITRATION ACTS, 1872, 1873 & 1875, *Re* ANGLO-AUSTRALIAN & UNIVERSAL FAMILY LIFE ASSURANCE CO., HARMAN'S CASE, PRATT'S CASE, 45 L. J. Ch. 332.

4993. *Add. Annotation:* **Mentd.** Rackham v. Tabrum (1923), 129 L. T. 24.

PART IX. SECT. 3, SUB-SECT. 4.—E.

ss. *Purpose illegal—Purpose partly fulfilled.*]—If A. gives to another as his agent a cheque to make a purchase forbidden by law, & the agent makes the purchase & indorses the cheque to the vendor, A. cannot recover from the agent an alleged balance unaccounted for of the amount of the cheque as money paid to the agent for A.'s use. While the money might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON v. FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—CAN.

PART X. SECT. 1.

sb. *Advertising agreement.*]—An agreement whereby defts. granted to J. S., carrying on business as J. S. Co., the exclusive rights of screen advertising, J. S. Co. to attend to all matters connected with the obtaining of advertising contracts, which it took in its own name:—*Held:* not assignable.—SWINSON (JOHN) CO., LTD. v. CRYSTAL PALACE, LTD., [1922] N. Z. L. R. 250; Gaz. L. R. 69.—N.Z.

ss. *Agreement for easement—Construction & use of tramway.*]—Deft. & another in 1916 granted to S. a right to lay down a tramway through deft.'s land for the purpose of removing S.'s timber. In 1919 S. assigned his rights under the agreement to plff. The assignment was known to defts., who raised no objection. Defts. in 1922 put gates across the tramway, removed part of the tramline, & destroyed part of a trestle bridge. *Held:* the grant or contract was not a personal one, & plff. had an equitable interest by assignment from S. in the easement.—MACDONALD v. PEDDLE, [1923] N. Z. L. R. 947.—N.Z.

PART XII. SECT. 2, SUB-SECT. 2.—A. (a).

4958 iii. ——— ———.]—A business was transferred to a new co. Plff. brought an action for an unpaid balance against the old firm. Evidence showed that plff. had disclosed no intention to accept the new co. as the debtor:—*Held:* the old firm were liable.—SIMPSON & ORR v. COUSINS, [1923] 1 D. L. R. 106.—CAN.

4958 iv. ——— ———.]—SWINSON (JOHN) CO., LTD. v. CRYSTAL PALACE, LTD., [1922] N. Z. L. R. 250; Gaz. L. R. 69.—N.Z.

PART XII. SECT. 2, SUB-SECT. 2.—B.

4990 iv. ——— ———.]—McCANNELL v. TYRRELL, [1923] 1 D. L. R. 911.—CAN.

ss. *What constitutes—Bill of exchange of new firm taken in payment—Bill dishonoured:* Plff. co., a creditor of a firm, had no notice of the dissolution of the partnership between the partners, C. & S., until Feb. 7, when H., plffs.' manager, was told of it. H. took an acceptance of S. for the amount due to plffs. down to Feb. 1, dating it as of Feb. 7, receipted the bill & continued to supply goods to S. down to Mar. 4 when the business was closed. On Mar. 10 the draft taken by H. was dishonoured, & on Mar. 31, the whole dealing was closed by H. taking a demand note from S. for the whole amount that is due to plff. co.:—*Held:* C. was not released from his liability to plffs. until after notice of dissolution given by S. on Feb. 7. There was no novation & plffs. were entitled to recover from the members of the firm their account down to the date of notice.—HAMILTON FIRTH CO., LTD. v. CALDWELL, [1923] 4 D. L. R. 65; 56 N. S. R. 222.—CAN.

Part XIII.—Interpretation of Contracts.

5031. *Add. Annotations :*—**Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Cohen *v.* Sellar, [1926] 1 K. B. 536.

5032. *Add. Annotation :*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

5033. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

5040. *Add. Annotation :*—**Mentd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

5042. *Add. Annotations :*—*As to* (1) **Refd.** Cockburn *v.* Smith (1923), 40 T. L. R. 113; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Transoceanica Soc. Italiana Di Navigazione *v.* Shipton, [1923] 1 K. B. 31; United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

5045. *Add. Annotations :* **Consd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739. **Refd.** Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406; Cohen *v.* Sellar, [1926] 1 K. B. 536.

5048. *Add. Annotations :* **Consd.** Cockburn *v.* Smith (1923), 40 T. L. R. 113; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395. **Refd.** Larrinaga *v.* Soc Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739; British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147; Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; United States Shipping Board *v.* Strick, [1926] A. C. 545. **Mentd.** The Empress, [1923] P. 96; Great Lakes S.S. Co. *v.* Maple Leaf Milling Co. (1924), 41 T. L. R. 21; The Grit, [1924] P. 246.

5052. *Add. Annotation :* **Mentd.** Thomas *v.* Todd, [1926] 2 K. B. 511.

5054. *Add. Citation :* 15 Asp. M. L. C. 514.

5059. *Add. Annotation :* **Apld.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

5060. *Add. Annotation :*—**Consd.** A.-G. *v.* G. S. & W. Ry. of Ireland, [1925] A. C. 754.

5066a. Term customary during war.]—The ct. found that since the outbreak of war in 1914 it had been a universal custom in the dried fruit trade to insert in all contracts for the sale of sultanas a clause as follows: "Should shipment be prevented by *force majeure* such as prohibition of export, blockade, war, or any consequence of warlike operations, this contract or the then unfulfilled part thereof to be cancelled without claim." The ct., therefore, rectified certain bought & sold notes by the addition of this clause on the ground that the parties must be taken to have contracted on this basis.—CARAMAN ROWLEY & MAY *v.* APERGHIS (1923), 40 T. L. R. 124.

5073. *Add. Annotation :* **Refd.** Einar Bugge *v.* Bowater (1925), 31 Com. Cas. 1.

5087. *Add. Annotation :*—**Refd.** Martin *v.* Stout, [1925] A. C. 359.

5088. *Add. Annotation : As to* (2) **Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

5102. *Add. Annotations :*—**Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates Des Medulla (1923), 92 L. J. K. B. 455; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re* Wait, [1926] Ch. 962.

5103. *Add. Annotation :*—**Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates Des Medulla (1923), 92 L. J. K. B. 455.

5104. *Add. Annotation :*—**Refd.** *Re* Wait, [1926] Ch. 962.

5117. *Add. Annotation :*—**Refd.** Sweet *v.* Williams (1922), 128 L. T. 379.

5126. *Add. Annotation :*—**Refd.** Sweet *v.* Williams (1922), 128 L. T. 379.

5132. *Add. Annotation :* **Consd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

5167. *Add. Annotation :* **Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

After this case add "*See further*, GIFTS, Vol. XXV., p. 525."

COPYHOLDS.

NOTE.—As to copyhold tenure & manorial incidents after 1925, *see* Law of Property Act, 1922 (c. 16), ss. 128–145, scheds. 12–15; Law of Property (Amendment) Act, 1924 (c. 5), sched. 2.

PART XIII. SECT. 2, SUB-SECT. 1.—C.

5068 ii. ——.]—While the ct. must not by implication actually make a contract for the parties, yet it may hold that on a reasonable consideration of the terms of the contract there is necessarily implied an obligation for the purpose of giving efficacy to the transaction & preventing such a failure of consideration as cannot have been within the contemplation of either side.—CANNON *v.* MCGREGOR, [1924] 2 D. L. R. 56; 2 W. W. R. 204; 20 Alta. L. R. 259.—CAN.

5068 iii. —— *Whether period of agency included.*]—A contract of agency contained no express stipulation as to the term of the agency:—*Held:* it was not necessary, in order to give business efficiency to the contract or to carry into effect the intention of the parties, to imply a term that the contract could be terminated only on reasonable notice, & such a term could not therefore be implied.—POLLARD *v.* GIBSON, [1924] 4 D. L. R. 354; 35 O. L. R. 424. CAN.

PART XIII. SECT. 2, SUB-SECT. 1.—H. (a) iii.

af. *Commission payable out of purchase-money.*]—Pltf., an agent, made a special contract with deft. whereby he was to obtain a portion of the purchase price:—*Held:* in the absence of express provision, there was no obligation on deft. to keep the contract of sale alive in order that pltf. might obtain his commission, & upon the cancellation of the contract of sale pltf.'s right was determined.—GOWAN *v.* BOWERN, [1924] App. D. 550.—S. AF.

Part I.—The Manor.

41. *Add Annotation :—As to* (1) **Reld.** Hodgson v. McCreagh (1923), 93 L. J. Ch. 339.

122. *Add. Citation :*—92 L. J. Ch. 55.

128. *Add. Annotation :—As to* (1) **Reld.** Jay v. Jay, [1924] 1 K. B. 826.

Part II.—Franchises and other Rights appendant to Manors.

213. *Add. Annotation :—Generally,* **Mentd.** Harper v. Hedges, [1923] 2 K. B. 314.

Part IV.—Manorial Courts.

325. *Add. Annotation :—As to* (1) **Apld.** *Re* Holliday, [1922] 2 Ch. 608.

Part V.—The Court Rolls and other Manorial Documents.

398. *Add. Annotation :*— **Consd.** Beaumont v. Jeffery (1924), 40 T. L. R. 796.

394a. —— **Purchaser for value.**]—Pltf., as lord of the manor of Great Tey, which he acquired by purchase in 1923, brought the present action of detinue to recover possession of certain ancient ct. rolls of that manor, which were of mere historical interest & which before his purchase pltf. had seen advertised for sale by deft., who, having purchased them in 1902, from one P., a waste paper dealer, had commenced advertising them for sale ten years before the commencement of the present action :—*Held :* in the absence of evidence to the contrary, it must be presumed that P. acquired the rolls lawfully in the ordinary course of his business from either the lord or the steward of the manor, & as the position of pltf.'s predecessor in title as trustee of the rolls, while they remained in his possession, did not make it illegal for him to part with them to a stranger, who came under the same obligation as the lord to produce them, pltf. was not entitled to recover the rolls. BEAUMONT v. JEFFERY, [1925] Ch. 1 ; 93 L. J. Ch. 532 ; 132 L. T. 216 ; 40 T. L. R. 706 ; 68 Sol. Jo. 867.

461. *Add. Annotation :* **Reld.** Love v. Bentley (1707), 11 Mod. Rep. 134.

482. *Add. Annotation :* **Reld.** Beaumont v. Jeffery (1924), 40 T. L. R. 796.

Part VI.—Officers of the Manor.

491. *Add. Citations :*— 2 Show. 21 ; Freem. K. B. 473.

Part VII.—Manorial Tenures.

610. *Add. Annotations :*—**Mentd.** Nicolle v. Voisin (1922), 91 L. J. P. C. 129 ; British-American Tobacco Co. v. Jones (1925), 134 L. T. 405.

Part IX.—Particular Estates in Land of Copyhold and Customary Tenure.

795. *Add. Annotation :*—**Mentd.** *Re* Engelbach's Estate, Tibbetts v. Engelbach, [1924] 2 Ch. 348.

1009. *Add. Annotation :*— **Mentd.** Cohen v. Sellar, [1926] 1 K. B. 536.

Part XI.—Relationship of Lord and Tenant as affecting Services, Dues, etc.

1164. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

1176. *Add. Annotation :*—**Consd.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123.

1192 *Citations :*—For "12 E. R. 1126" read "125 E. R. 1126."

1241. *Add. Annotation :*—**Refd.** United Dairies *v.* Public Trustee, [1923] 1 K. B. 469.

1273. *Add. Annotation :*—**Mentd.** Harper Hedges, [1923] 2 K. B. 314.

Part XII.—Descent of Copyholds.

1384. *Add. Annotation :*—**Mentd.** Elliott *v.* Boynton, [1924] 1 Ch. 236.

Part XV.—Devise of Copyholds.

1506. *Add. Annotation :* — **Refd.** *Re* Brooke, Brooke *v.* Dickson, [1923] 2 Ch. 265.

1508. *Add. Annotation :* — **Refd.** *Re* Brooke, Brooke *v.* Dickson (1923), 92 L. J. Ch. 504.

1533a. — — **Remainder to his heir-at-law—Rule in Shelley's Case applies.**]—By his will testator, among other devises of freeholds & copyholds, devised his two copyhold houses, gardens, & premises situate in the parish of B., & also a piece of copyhold land adjoining, to his nephew G. for life without impeachment of waste, & after his death he the same premises to the "heir-at-law" of the said G. There was no special custom of descent in the manor of B. affecting these copyholds :—*Held :* the use of the expression "heir-at-law" did not exclude the operation of the rule in *Shelley's Case*, which accordingly applied, & G. was entitled in customary fee simple for an estate to him & his heirs according to the custom of the manor.—*Re* HACK, BEADMAN *v.* BEADMAN, [1925] Ch. 633 ; 94 L. J. Ch. 343 ; 133 L. T. 134 ; 69 Sol. Jo. 662.

See, now, Law of Property Act, 1922 (c. 16), ss. 128–145, Scheds. 12–15 ; Law of Property Act, 1925 (c. 20), s. 131.

Part XVIII.—Mode of Transmission of Copyholds inter vivos.

1566. *Add. Annotation :* —**Mentd.** Lapish *v.* Braithwaite (1924), 93 L. J. K. B. 1123.

Part XIX. Determination and Suspension of Tenant's Estate.

1970. *Add. Annotation :*—**Mentd.** *Re* Twopeny's Settlmt., Monro *v.* Twopeny, [1924] 1 Ch. 522.

COPYRIGHT AND LITERARY PROPERTY.

Part I.—Nature of Copyright.

4. *Add. Annotation:*—**Reld.** Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.

16. *Add. Annotation:*—**Reld.** Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.

16a. Dramatic work—No "first publication" within 1911 Act, s. 1 (3)—Owner entitled to substituted copyright under 1911 Act, sched. 1.] —Under Dramatic Copyright Act, 1833 (c. 15), a foreign author dwelling British territory was entitled to dramatic copyright within the British Empire of the first performance of his play given in this country. By an agreement in writing dated June 30, 1898, G., the author & sole proprietor of the right to perform a play, granted to pltf. the sole & e right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place:—*Held:* a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third who claimed a right to produce graph films of the play under an nt for value with G., dated Sept. 6, to prove that the first performance of the play took place in this country as in the letter since, (1) being written by G.'s agent, it constituted an by G., a person who, although not the record, had a substantial interest in the result, & (2) it an by defts.' predecessors in title.

(3) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *prima facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.

(4) 1911 Act, s. 1 (1) (*a*) & s. 1 (3), which provide that copyright shall subsist in every dramatic work if it has been first published in His Majesty's dominions, but that the performance in public shall not be deemed to be publication, prescribe conditions for the future, but do not inflict them on past events so as to destroy existing rights.

(5) Where the owner of dramatic copyright possessed [by assignment] the sole right to perform, or permit the performance of, a certain play before 1911 Act came into operation he acquired, by sect. 2 (1) coupled with sects. 24 & 35 of the Act, sched. 1 to the Act, the right to the graph & film rights of that play also.

An American corpn. made a film & a negative & two positives of it to an co., who made further copies of the film & handed them to another English co., who let them to a British exhibitor. The American corpn. & the two British cos. were interworking organisations linked together by complex agreements, & they all three shared in part of the receipts from the exhibition of the film by the exhibitor. The exhibitor in exhibiting the film, infringed pltf.'s copyright:—*Held:* (6) the American corpn. & the two British cos. had actively directed, counselled or aided the infringement by the exhibitor, & had infringed pltf.'s rights within 1911 Act, s. 2 (1), the operative effect of which sub-sect. is extended & not limited by sect. 2 (2) & (3).

(7) Where an infringement of copyright is proved under 1911 Act, s. 2 (1), the question of knowledge of infringement by the infringer does not arise except possibly with reference to the exemption from penalties for infringement provided by sect. 8 of the Act.—FALCON v. FAMOUS PLAYERS FILM CO., LTD., [1926] K. B. 393; 95 L. J. K. B. 118; 134 L. T. 240; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 96 L. J. K. B. 88; 135 L. T. 850; 42 T. L. R. 606; 70 Sol. Jo. 756, C. A.

Part II.—Subject-Matter.

18. *Add. Annotation:*—**Reld.** Macmillan v. Cooper (1923), 93 L. J. P. C. 113.

Add. Annotation:—As to (1) **Folld.** M v. (1923), 93 L. J. P. C. 113.

41. *Add. Annotation:—As to* (3) **Reld.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

42. *Add. Annotations:—As to* (1) **Consd.** Macmillan v. Cooper (1923), 93 L. J. P. C. 113. **Folld.** Masson Seeley v. Embossotype Manufacturing Co. (1924), 41 R. P. C. 160. **Consd.** British Oxygen Co. v. Liquid Air, [1925] Ch. 383. *As to* (5) **Consd.** Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1. , **Reld.** British Broadcasting Co. v.

Wireless League Gazette Publishing Co., [1926] Ch. 433.

43a. —— **Letter written by manufacturer to trade customer.**]— (1) A letter written by manufacturers to a trade customer, offering their goods at a low price if the customer agrees to take such goods exclusively from them, is an "original literary work" within 1911 Act, s. 1 (1), & the writers are entitled to copyright therein. Such a letter is not contrary to public policy as being in restraint of trade.

(2) The publication of the letter by rival manufacturers, together with a covering letter of criticism, is not "fair dealing" within sect. 2 (1) (*i*) of the Act.—BRITISH OXYGEN Co. *v.* LIQUID AIR, LTD., [1925] Ch. 383; 95 L. J. Ch. 81; 133 L. T. 282.

51. *Add. Annotation:*—**Consd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

55. *Add. Annotation:—As to* (5) **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

60. *Add. Annotation:*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

65. *Add. Annotation:* **Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

73. *Add. Annotation:* **Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

74. *Add. Annotation: As to* (1) **Consd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

77a. — — — — **For type—Protected.**]—Pltf. co., which carried on the business of supplying cutter-crush machines & type & other materials used therewith, issued a catalogue consisting for the most part of a number of words which illustrated the products of the several sizes & shapes of type supplied by the co. & customers ordered a particular class of type by referring to such words. Nearly all the words were selected by the managing director of the co. In 1922 defts., who were carrying on a similar business, circulated price lists which were practically copies of the price lists of pltf. co., the words used in pltf. co.'s catalogue & price lists to indicate the style of type being copied in defts.' price lists without alteration. Pltf. co. commenced proceedings for an injunction to restrain infringement of copyright in their catalogue & passing off of goods which were not their goods as being their goods. On the question of copyright defts. contended (*inter al a*) that pltfs.' catalogue was a design or collection of designs capable of registration under Patents & Designs Acts, 1907 (c. 29), & 1919 (c. 80), & not the subject of protection under 1911 Act:—*Held:* on the question of copyright the contentions put forward by defts. failed, & an injunction restraining infringement of the copyright of pltfs. in their catalogue was granted.—MASSON SEELEY & CO., LTD. *v.* EMBOSOTYPE MANUFACTURING CO. (1924), 41 R. P. C. 160.

80. *Add. Annotation:—Generally*, **Mentd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

85a. **Programmes.**]—Pltfs. were a limited co. formed to acquire the Postmaster-General's licence for the establishment & working of broadcasting stations, & to carry on any other business ancillary, incidental, or conducive thereto. Under the terms of their licence & a supplementary agreement pltfs. were required to transmit efficiently every day a programme of broadcast matter to the reasonable satisfaction of the Postmaster-General. They were not allowed to alter their memorandum as to objects without his written consent. He might revoke their licence if they failed to transmit satisfactory programmes, & within one month from their ceasing to hold the licence they were bound to pass a special resolution for voluntary winding up. Their profits from all sources beyond a 7½ per cent. cumulative dividend on their paid-up capital belonged to the Postmaster-General. Nine months after the licence, with the approval of the Postmaster-General pltfs. began publishing the *Radio Times* every Friday, including therein the advance daily programmes for the ensuing week Sunday to Saturday. These programmes gave the day & hour of each performance, the artist's name, appropriate headings for items or groups of items, & translations of unfamiliar foreign titles of songs or music. The preparation, arrangement, & editing of the actual programmes involved considerable time, skill, labour & expense, although the preliminary work of fixing the days & hours, engaging the artists, & choosing the items had all been done some time beforehand. Defts. having selected & copied numerous items from a set of advance programmes so published, pltfs. sued for infringement of copyright:—*Held:* (1) whether there was or was not copyright in an individual programme, there was undoubtedly copyright in the compilation of the seven advance programmes; (2) although the programmes were subject to the approval or veto of the Postmaster-General, who had power to revoke the licence if they included improper matter, they were not a work "prepared or published by or under" his "direction or control" within 1911 Act, s. 18, & so long as pltfs. were allowed to trade & publish them, the copyright belonged to pltfs. & not to the Crown. (3) *Semble:* there may be copyright in an individual programme.—BRITISH BROADCASTING CO. *v.* WIRELESS LEAGUE GAZETTE PUBLISHING CO., [1926] Ch. 433; 95 L. J. Ch. 272; 135 L. T. 93; 42 T. L. R. 370.

88. *Add. Annotation:—As to* (2) **Refd.** Bowling *v.* Camp (1922), 128 L. T. 342.

92a. **Abridgment—May be new work.**]—While there may be copyright in an abridgment of a larger work, in a case in which accurate knowledge, sound judgment, & literary skill in presenting in a condensed form the material of the original author are displayed, there can be no copyright in a book consisting merely of extracts taken verbatim from a work in which there is no copyright, & strung together by connecting sentences, so as to make the extracts read as a consecutive narrative. There may, however, be copyright in notes appended to such a book, although there is no copyright in the text.—MACMILLAN & CO. *v.* COOPER (1923), L. R. 51 Ind. App. 109; 93 L. J. P. C. 113; 130 L. T. 675; 40 T. L. R. 186; 68 Sol. Jo. 235, P. C.

Annotation:—**Refd.** Masson Seeley *v.* Embosotype Manufacturing Co. (1924), 41 R. P. C. 160.

After this case for "**Abridgment—May be new work.**] —*See* Nos. 422, 426, *post*," read "—— ——.]—*See, also*, Nos. 422, 426."

95. *Add. Annotation :*—**Mentd.** Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co., [1924] A. C. 400.

97. *Add. Annotation :*—**Refd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

118a. Adaptation of old play—Original musical composition.]—1911 Act has extended the protection of copyright, & there is musical copyright in an arrangement of previous music which amounts to a new work.

Pltf. composed music for an opera which was an adaptation of an old play. Defts. prepared an orchestral score from the same source, records of which they offered to the trade. Pltf. complained that defts. were passing off these records as records of pltf.'s music :—*Held :* defts. had borrowed from pltf.'s work in a way which was more than mere coincidence, & had infringed pltf.'s copyright.—AUSTIN v. COLUMBIA GRAPHOPHONE Co. (1923), 67 Sol. Jo. 790.

119. *Add. Annotation :*—**Refd.** Austin v. Columbia Graphophone Co. (1923), 67 Sol. Jo. 790.

120. *Add. Annotation :* **Consd.** Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.

137. *Add. Annotation :* —*As to* (2) **Folld.** Ridgway Co. v. Hutchinson (1923), 40 R. P. C. 335.

Part III.—Publication.

151. *Add. Annotation :* **Refd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

164. *Add. Annotation :*—*As to* (1) **Consd.** Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.

165. *Add. Annotation :* **Folld.** Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.

180a. What documentary evidence admissible—Letters—From author's agent to assignee of performing rights.]—FALCON v. FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

180b. —— Entry in register at Stationers' Hall — Entry incorrect.]—FALCON v. FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

Part IV. Ownership.

190. *Add. Annotation :*—**Refd.** Austin v. Columbia Graphophone Co. (1923), 67 Sol. Jo. 790.

194. *Add. Annotations :*—**Consd.** Macmillan v. Cooper (1923), 93 L. J. P. C. 113; **Refd.** British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

197a. Automatic writing by medium.]—A woman journalist, engaged as a medium in psychical research, claimed copyright in a production written by her in automatic writing & alleged to be communicated by a spiritual agent. Deft. was present at some of the séances & alleged that the communication was addressed to him. He claimed that the copyright was in him, or that it was a joint copyright, or that there was no copyright in any one :—*Held :* pltf. was the sole owner of the copyright.—CUMMINS v. BOND (1926), 70 Sol. Jo. 1003.

229a. Sketches for advertisement show cards—Ordered by & made for advertiser for valuable consideration—Design not registered under Patents & Designs Act, 1907 (c. 29).]—Pltfs. claimed to be the assignees from the author of two sketches for cut-out advertisement show cards representing a pierrot & pierrette respectively with large faces & diminutive bodies. These sketches were shown by the author to defts. with defts.' name upon them with the view of being used by them for advertisement purposes. At the suggestion of defts. the colour of the costumes of the figures was changed from mauve to green & yellow; the colour of the lettering of defts.' name was also changed from red to green & yellow. Defts. ordered a number of the sketches so altered at a price which gave the author a very considerable profit. Subsequently defts. obtained a number of the sketches from sources other than pltfs.' Neither pltfs. nor the author had registered the sketches as designs under the above Act. In an action by pltfs. for infringement of copyright :—*Held :* (1) under 1911 Act, s. 5 (1) (*a*), defts. were the first owners of the copyright in the original sketches, as the sketches were ordered by, & were made for, them for valuable consideration & were "engravings" within that sub-sect.; (2) the sketches were designs which were capable of being registered under Patents & Designs Act, 1907, & as they were used or intended to be used as models or patterns to be multiplied by an industrial process, 1911 Act, by reason of sect. 22, did not apply to them, & as the sketches had not been registered as designs under the Act of 1907 pltfs. could not succeed.—COX PLANCK, LTD. v. KOLYNOS INCORPORATED, [1925] 2 K. B. 804; 94 L. J. K. B. 923; 133 L. T. 708.

PART II. SECT. 3, SUB-SECT. 3.

sk. *Plan—Of harbour.*]—LYTHAR v. GISBORNE HARBOUR BOARD, [1924] N. Z. L. R. 13.—N.Z.

Part V.—Assignment, Licence and Royalties.

247. *Add. Annotation :*—**Reld.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

256. *Add. Annotation :—As to* (1) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

278. *Add. Annotation :*—**Reld.** The Lord Strathcona, [1925] P. 143.

308. *Add. Annotation :*—**Reld.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

308a. —— —— ——.]—Pltf. was the sole authoress of & owner of the copyright in a novel called "The Scarlet Pimpernel." In 1903 in collaboration with her husband, she composed a dramatic version of the novel. By an agreement dated June 10, 1903, pltf. & her husband, as authors, granted to defts. T., as theatrical managers, the right of production of the play during a then forthcoming tour, & at a first-class West End London theatre, for two years; & the agreement further provided that if the production took place within that period then "the entire rights for the United Kingdom, the United States of America, & the Dominion of Canada in the play became theirs inalienable, & they shall present it when & where they will within the countries aforesaid," paying to the authors 5 per cent. on the gross weekly takings. Defts. fulfilled the specified condition. In an action by pltf. claiming a declaration that she had the sole right to perform the work by means of cinematograph films :—*Held :* the entire performing rights in the play became vested in defts. by virtue of the agreement, & when 1911 Act came into operation the right so vested included the right to the cinematograph reproduction of the play; & therefore pltf.'s action failed.—BARSTOW *v.* TERRY, [1924] 2 Ch. 316; 93 L. J. Ch. 607; 132 L. T. 53.

Annotation :—**Folld.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

308b. —— —— ——.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

325. *Add. Annotations :—Generally*, **Reld.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474. **Mentd.** Evans *v.* Hulton (1924), 131 L. T. 534.

325a. Reproduction of two works in one volume.]—Where a person reproduces in one volume, under the conditions set out in the proviso to 1911 Act, s. 3, two copyright works by the same author, the provision as to the payment of a royalty "of 10 per cent. on the price at which he publishes the work" is satisfied by the payment of a royalty of 10 per cent. on the price at which he publishes the volume, inasmuch as the word "work" includes "works" by Interpretation Act, 1889 (c. 63), s. 1 (1) (*b*).—OSBOURNE *v.* DENT (J. M.) & SONS, LTD., [1925] Ch. 369; 94 L. J. Ch. 308; 133 L. T. 362; 41 T. L. R. 419; 69 Sol. Jo. 590.

Part VI.—University Copyright.

327. *Add. Annotation :*—**Mentd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

Part VII.—Crown Copyright.

332a. Programmes prepared by British Broadcasting Company—Whether "published by or under direction or control" of Crown.]—BRITISH BROADCASTING CO. *v.* WIRELESS LEAGUE GAZETTE PUBLISHING CO., No. 85a, *ante*.

Part IX.—Letters.

355. *Add. Annotation :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

360. *Add. Annotation :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

364. *Add. Annotation :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

366. *Add. Annotation :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

373. *Add. Annotation :*—**Mentd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

Part XII.—Registration.

To the cross-references in this Part add as follows:—

Effect of—Admissibility of entry in register—

To prove first performance of dramatic work in England.]—*See* No. 16a, *ante*.

Part XIII.—Infringement.

394a. Knowledge of infringement — Whether material.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

After this case for "**As to knowledge as a defence.**]—*See* No. 47, *ante*; Nos. 506, 539, 540, 541, 557, *post*," read "——— ———.]—*See, also*, No. 47, *ante*; Nos. 506, 539-541, 557, *post*."

394b. Authorising publication of unpublished work —Sale of rights in manuscript.]—To sell the rights in relation to an MS. to another with the view of its production, it being, in fact, produced as a result of such a sale, is "to authorise" the printing & publication within 1911 Act, s. 1 (2), & it is not necessary that there shall be an actual sanction of the acts being done by the servant or agent of the person affecting to give the authority on his behalf.—EVANS *v.* HULTON (E.) & CO., LTD. (1924), 131 L. T. 534; 40 T. L. R. 480; 68 Sol. Jo. 616.

Annotation:—**Apprvd.** Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.

See, also, Nos. 489a, 489b, 510, *post*.

398a. ——— By manufacturer—Of letter written by rival manufacturer—Covering letter of criticism.]—BRITISH OXYGEN CO. *v.* LIQUID AIR, LTD., No. 43a, *ante*.

414. *Add. Annotation*:—**Reld.** Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.

426a. ——— ———.]—MACMILLAN & CO. *v.* COOPER, No. 92a, *ante*.

441. *Add. Annotation*:—**Reld.** British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

442. *Add. Annotation*:—**Reld.** Macmillan v. Cooper (1923), 93 L. J. P. C. 113.

467. *Add. Annotations*:—**Mentd.** Harrison v. Wythemoor Colliery Co., [1922] 2 K. B. 674; Nichol v. Fearby, Nichol v. Robinson, [1923] 1 K. B. 480; Lapish v. Braithwaite (1924), 93 L. J. K. B. 1123.

483. *Add. Annotation*:—**Reld.** Harms (Incorporated) v. Embassy Club (1926), 43 T. L. R. 21.

483a. ——— In public—What amounts to.]—The question whether the performance of a musical work was a performance in public, so as to constitute an infringement of copyright, is a question of fact, &, in determining that question, the *quantum* of damage likely to accrue & the number & class of persons having a right to be present at the performance are factors to be noted.—HARMS (INCORPORATED) *v.* EMBASSY CLUB, LTD. (1926), 43 T. L. R. 21; 70 Sol. Jo. 1219, C. A.

484. *Add. Annotation*:—**Reld.** Austin v. Columbia Graphophone Co. (1923), 67 Sol. Jo. 700.

488a. ———.]—AUSTIN *v.* COLUMBIA GRAPHOPHONE CO., No. 118a, *ante*.

489a. By authorising performance—Director of theatrical syndicate with power to prevent performance.]—Pltfs. were the proprietors of the right of performing in public certain musical pieces, & defts. syndicate were producers of plays at a theatre, & the second defts. was their managing director, & had power to prevent the orchestra from playing any particular piece of music. The orchestra, which was paid by the syndicate, played the pieces in question. In an action for infringement:—*Held*: since on the facts the second defts. had not authorised or permitted the performance within 1911 Act, s. 1 (2), pltfs. were not entitled under sect. 2 (1) of the Act to an injunction or damages against him.—PERFORMING RIGHT SOCIETY *v.* CIRYL THEATRICAL SYNDICATE, [1924] 1 K. B. 1; 92 L. J. K. B. 811; 129 L. T. 653; 39 T. L. R. 460; 68 Sol. Jo. 83, C. A.

Annotations:—**Consd.** Evans v. Hulton (1924), 131 L. T. 534. **Reld.** Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762; Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

489b. ——— Effect of 1911 Act, s. 1 (2).]—The word "authorise" in the above sub-sect. is superfluous, & there is nothing in the sub-sect. which cuts down the liability under sect. 2 (1) of the Act, in respect of an infringement of copyright.

Defts., who were the occupiers of a dancing hall, engaged on the terms of a written agreement a band to provide music therein. The agreement provided that the band should not, in the music played, infringe any copyright, & should be liable for damages & costs caused by any infringement. There was also a notice posted in the hall that "only such music as may be played without fee or licence is allowed to be played in this hall." On one occasion the band played certain music, the copyright of which belonged to pltfs., without pltfs.' licence; but defts. did not know, & had no reasonable ground for suspecting, that this infringement would take place. In an action by pltfs. for damages & an injunction:—*Held*: on its true construction, the agreement between defts. & the band constituted the latter the servant

PART XIII. SECT. 1, SUB-SECT. 4.

489 l. *By sale of records.*]—Gramophone records which infringe copyright are "infringing copies" of a work within Imperial Copyright Act, 1911, s. 35.—ALBERT *v.* BOOSEY & CO., LTD. (1921), 22 S. R. N. S. W. 75; 39 N. S. W. W. N. 5.—AUS.

m. *By broadcasting.*]—Defts., who carried on, for reward, the business of broadcasters, included in their programmes, caused to be sung by vocalists in their studio & broadcast, certain musical works, of the copyright in which pltf. was the owner:—*Held*: defts. had infringed pltf.'s copyright.—CHAPPELL & CO., LTD. *v.* ASSOCIATED RADIO CO. OF AUSTRALIA, LTD., [1925] V. L. R. 350; 47 A. L. T. 12; 31 Argus L. R. 297.—AUS.

of defts., & not independent contractors; the band on the occasion in question were acting in the course of their employment; defts. were liable under 1911 Act, s. 2, for the infringement of copyright; & pltfs. were entitled to damages & an injunction.—PERFORMING RIGHT SOCIETY, LTD. *v.* MITCHELL & BOOKER (PALAIS DE DANSE), LTD., [1924] 1 K. B. 762; 93 L. J. K. B. 306; 131 L. T. 243; 40 T. L. R. 308; 68 Sol. Jo. 539.

Annotations:—**Consd.** Evans *v.* Hulton (1924), 131 L. T. 531. **Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

See, also, Nos. 394a, 510, 510a.

502. *Add. Annotation:* **Refd.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21.

507. *Add. Annotation:* **Consd.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21.

509. *Add. Annotation:*—**Consd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

510. *Add. Annotations:*—**Consd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

510a. ——.] FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante.*

See, also, Nos. 394a, 489a, 489b, *ante.*

513a. ——.] Pltfs. were the publishers of a magazine, published in America at frequent intervals, called "Adventure." Defts. proposed to publish a monthly magazine called "Hutchinson's Adventure Story Magazine." In an action by pltfs. to restrain such publication:—*Held:* where any one adopted a descriptive word, as pltfs. had done, they must not object if other persons made use of it, as descriptive of similar articles; pltfs. had no monopoly of the word "Adventure," & on the evidence no real confusion existed between pltfs.' & defts.' periodicals.—RIDGWAY CO. *v.* HUTCHINSON (1923), 40 R. P. C. 335.

525. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

531. *Add. Annotations:*—*As to* (1) **Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91. **Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

536. *Add. Annotation:*—**Refd.** Osbourne *v.* Dent, [1925] Ch. 369.

548. *Add. Annotations:*—*As to* (2) **Refd.** Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282; Hughes *v.* Satchell (1925), 134 L. T. 93.

553. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1.

555. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1.

Part XIV.—Remedies.

601. *Add. Annotation:*—**Consd.** Macmillan *v.* Cooper (1923), 23 L. J. P. C. 113.

635a. ——.] MACMILLAN & CO. *v.* COOPER, No. 92a, *ante.*

638. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

642. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

644. *Add. Citations:* *Affd.*, [1924] A. C. 1; 93 L. J. K. B. 33; 130 L. T. 450; 40 T. L. R. 52; 68 Sol. Jo. 99, H. L.

Add. Annotation: **Refd.** Imperial Tobacco Co. of India *v.* Bonman, [1924] A. C. 755.

653. *Add. Annotation:*—**Mentd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 551.

693. *Add. Annotation:* *As to* (1) **Consd.** Preston *v.* Raphael Tuck, [1926] Ch. 667.

694a. —— **Sale must be of work represented to be unaltered.**] Pltf., the author of two original drawings, sold the copyright to defts. Defts. afterwards published & sold two drawings, which were made by alterations of pltf.'s original drawings, but which had titles different from the titles of pltf.'s drawings. Defts. did not in any way expressly represent that the drawings made by such alterations were pltf.'s. Pltf. brought against defts. a passing-off action in which she alleged that her work had a distinctive character & could be recognised without bearing her name, & she claimed an injunction & penalties under sect. 7 of the above Act:—*Held:* to satisfy the sect. there must be a selling or publishing in conditions under which, to the knowledge of the seller or publisher, there was made either expressly or by necessary implication a representation that the author was the author of the work in the form in which it was sold or published, & since, although there was in many of pltf.'s productions a measure of distinctiveness, the mere seeing of defts.' productions did not necessarily suggest the inference that they were the unaltered work of pltf., the action failed.—PRESTON *v.* RAPHAEL TUCK & SONS, [1926] Ch. 667; 95 L. J. Ch. 382; 135 L. T. 93; 42 T. L. R. 440.

PART XIV. SECT. 3.

am. *Under Copyright Act, R. S. C., 1906 c. 70.*]—Pltf. seeking to recover penalties under sect. 39 of the above Act cannot succeed if the ct. is satisfied that, in committing the act or the acts charged as an infringement of copyright, deft. did not act "with intent to evade the law."—NATIONAL BREWERIES *v.* PARADIS, [1925] 3 D. L. R. 875; [1925] S. C. R. 666; *affg.*, [1924] 1 D. L. R. 1052; 30 B. L. N. S. 429.—**CAN.**

CORONERS.

Part IV.—Remuneration and Compensation payable to Coroners.

45. *Add Annotation :—Generally*, **Mentd.** Everett v. Griffiths, [1924] 1 K. B. 941.

Part VII. Inquests.

147. *Add. Annotation : As to* (2) **Refd.** R. v. Haslewood, *Ex p.* Margerison, [1926] 2 K. B. 168.

158a. — .]— The failure by a coroner at an inquest to view the body makes the inquest a nullity, & is not merely an irregularity giving the ct. a discretion as to whether it will order another inquest, &, since on such failure there has been no inquest, the ct. will quash the proceedings before the coroner & order an inquest to be held. R. v. HASLEWOOD, *Ex p.* MARGERISON, [1926] 2 K. B. 168 ; 95 L. J. K. B. 975 ; 90 J. P. 158 ; 42 T. L. R. 716 ; 70 Sol. Jo. 906 ; 24 L. G. R. 505, D. C.

237. *Add. Annotation : Generally*, **Refd.** R. v. Haslewood, *Ex p.* Margerison, [1926] 2 K. B. 168.

408. *Add. Annotation :* **Consd.** *Re* Stollery, Weir v. Treasury Solicitor, [1926] Ch. 281.

409. *Add. Annotation :* **Mentd.** Baker v. Dalgleish Steam Shipping Co., [1922] 1 K. B. 361.

PART V. SECT. 1, SUB-SECT. 3. A. 52 iv. —— — — *Writ of fieri facias.* —If the sheriff of a jurisdiction is a deft., a writ of *fi. fa.* against his goods may be directed to & executed by the coroner. The right to adopt this practice is not affected by Sheriffs Act, ss. 8, 9, or by the fact that there is a deputy sheriff appointed by the Crown. WILLIAMS v. RICHARDS, [1923] 1 W. W. R. 1021 ; 33 B. C. R. 68. — CAN.

CORPORATIONS.

Part I.—Nature and Attributes.

79. *Add. Annotations* :—**Reld.** Everett *v.* Griffiths, [1924] 1 K. B. 941; Aylott *v.* West Ham Corpn., Sisson *v.* West Ham Corpn. (1926), 90 J. P. 99.

176. *Add. Annotation* :—**Reld.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

Part II.—Creation of Corporations.

264. *Add. Annotation* :—**Mentd.** Dewhurst *v.* Salford Grdns., [1925] Ch. 655.

Part III.—The Members.

326. *Add. Annotation* :—**Mentd.** Everett *v.* Griffiths (No. 3), [1923] 1 K. B. 138.

340. *Add. Annotations* :—**Folld.** Dodd *v.* Amalgamated Marine Workers' Union (No. 2) (1923), 93 L. J. Ch. 100. **Consd.** Dodd *v.* Amalgamated Marine Workers' Union (1923), 129 L. T. 401.

340a. ——— ———.]—Trade Union Act, 1871 (c. 31), s. 14, & sched. 1 (6), gives every member of a trade union a right to inspect the books of the union, "under proper conditions." That right entitles a member to inspect them by a skilled accountant, but the accountant should not be objectionable to the union on personal grounds, & should undertake not to disclose the information obtained by him except to his client. The fact that the trade union officials believe that the member desiring to inspect the books by an accountant is acting *mala fide*, & for purposes hostile to the union, does not give them an implied discretion to refuse the inspection. The *onus* of establishing that the right of inspection should not be exercised lies on the trade union.—DODD *v.* AMALGAMATED MARINE WORKERS' UNION, [1924] 1 Ch. 116; 93 L. J. Ch. 100; 129 L. T. 819; 40 T. L. R. 44; 68 Sol. Jo. 117, C. A.

Trade unions generally, *see* TRADE & TRADE UNIONS.

345a. ——— ———.]—DODD *v.* AMALGAMATED MARINE WORKERS' UNION, No. 340a, *ante*.

Part IV.—Officers.

421. *Add. Annotation* :—**Reld.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

512. *Add. Annotation* :—**Reld.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

Part V.—Election to Corporate Office.

583. For "**How tested—Not by mandamus directed against person elected.]**" read "**How tested—Not by quo warranto directed against person elected.]**"

Part VI.—Regulations and Bye-laws.

631. *Add. Annotations* :—**Consd.** A.-G. *v.* Denby, [1925] Ch. 596; Roberts *v.* Hopwood, [1925] A. C. 578. **Reld.** Owner *v.* King (1922), 128 L. T. 307; Mills *v.* L. C. C. (1924), 41 T. L. R. 122; R. *v.* Roberts, *Ex p.* Scurr, [1924] 2 K. B. 695; Short *v.* Poole Corpn. (1925), 42 T. L. R. 107. **Mentd.** United Bill Posting Co. *v.* Somerset County Council (1926), 95 L. J. K. B. 899.

Part VII.—Meetings.

794. *Add. Annotation:*—**Refd.** Neuschild *v.* British Equitorial Oil Co., [1925] Ch. 346.

820. *Add. Annotation :*—**Mentd.** Leyton U. D. C. *v.* Wilkinson (1926), 43 T. L. R. 35.

Part VIII.—Corporation Books and Documents.

865. *Add. Citations :*—*sub nom.* R. *v.* SANKEY, 5 Ad. & El. 423; 6 Nev. & M. K. B. 839; 5 L. J. K. B. 255; 111 E. R. 1226.

Annotation :—**Distd.** Newington L. B. *v.* Eldridge (1879), 12 Ch. D. 349.

866. *Add. Citations :*—*sub nom.* R. *v.* RYE (MAYOR), 2 Keny. 485; 96 E. R. 1253.

Part IX.—Powers and Liabilities Generally.

880. *Add. Annotations :*—**Apld.** The Devon (1923), 130 L. T. 448 **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746; British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147.

902. *Add. Annotation :*—*As to* (2) **Refd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

903a. —— **Settled Land Act, 1925 (c. 18), ss. 19 (1), 20 (1).**]—The above sub-sects. are applicable to a corpn., because the words "person of full age" are used throughout the new legislation in contrast with the word "infant," & merely mean "not being an infant," so that they are appropriate to a corpn. *Re* CARNARVON'S (EARL) CHESTERFIELD SETTLED ESTATES, *Re* CARNARVON'S (EARL) HIGHCLERE SETTLED ESTATES (1926), 70 Sol. Jo. 977.

910. *Add. Annotation :*—**Consd.** *Re* Gibbs & Houlder's Lease, Houlder *v.* Gibbs, [1925] Ch. 575.

922. *Add. Annotation :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

928. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

932. *Add. Annotations :*—**Apld.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691. **Mentd.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416.

935a. —— ——.]—Pltfs. were by statute entrusted with the control & management of part of the navigations of the Rivers Ouse & Foss, in Yorkshire, with power to charge such tolls, within limits, as the corpn. deemed necessary to carry on the two navigations in which the public had an interest. In 1888 the corpn. entered into two agreements with the firm of H. L. & Sons. By the Ouse agreement the corpn. covenanted to allow the firm, their successors & assigns, the right to carry cargoes on the Ouse in consideration of the annual payment of £600 in place of the authorised dues & charges, with a proviso that there should each year be refunded to the firm, their successors & assigns, the difference between the £600 & the amount ordinarily charged on the traffic actually carried. By the Foss agreement the firm covenanted to pay the corpn. £200 *per annum* for twenty years as a composition for the ordinary tolls, & the corpn. covenanted to allow the firm, their successors & assigns, the free use of the Foss navigation, on payment of £200 *per annum* in lieu of tolls, for such further term or terms as the firm, their successors or assigns, might from time to time desire. Defts. were the successors of H. L. & Sons :—*Held :* the agreements were *ultra vires*, because during their currency, which depended on the wishes of defts., the corpn., no matter what emergency might arise, had disabled itself from exercising its statutory powers to increase the tolls so far as might be necessary; &, being *ultra vires* at the date of their execution, the agreements did not become *intra vires* by reason of estoppel, lapse of time, ratification, acquiescence or delay.—YORK CORPN. *v.* LEETHAM (HENRY) & SONS, LTD., [1924] 1 Ch. 557, 94 L. J. Ch. 159; 131 L. T. 127; 40 T. L. R. 371; 68 Sol. Jo. 459; 22 L. G. R. 371.

Annotation :—**Dbtd.** Birkdale District Electric Supply Co *v.* Southport Corpn., [1926] A. C. 355.

948. *Add. Annotation :*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

952. *Add. Annotation :*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

955. *Add. Annotations :*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691. **Refd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1.

964. *Add. Annotation :* **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

994. *Add. Annotations :*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426. **Refd.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416. **Mentd.** A.-G. *v.* Derby, [1925] Ch. 586.

996. *Add. Annotation :* **Apld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 512.

997. *Add. Annotation :* *As to* (1) **Apld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

998. *Add. Annotations :*—**Apld.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691. **Refd.**

PART IX. SECT. 2, SUB-SECT. 1.

p 1. —— *British Columbia Government Liquor Act*, ss. 26, 46—*Does not include Army & Navy Veterans in Canada (Victoria Unit)—Branch association established by corporation.*)—R. *v.* VICTORIA UNIT (ARMY & NAVY VETERANS), [1921] 3 W. W. R. 594; 66 D. L. R. 512; 36 Can. Crim. Cas. 285; 30 B. C. R. 245.—CAN.

A.-G. v. Westminster City Council, [1924] 2 Ch. 416.

1002. *Add. Annotations :—As to* (2) **Reld.** Deuchar v. Gas Light & Coke Co., [1925] 5 A. C. 691. *Generally*, **Mentd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1.

1006. *Add. Annotations:*—**Consd.** Kreditbank Casse G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. **Reld.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

1033. *Add. Annotation :*—**Reld.** Attwood *v.* Llay Main Collieries (1925), 70 Sol. Jo. 265.

Part X.—Contracts.

1103. *Add. Annotation :— As to* (1) **Apld.** Higgins v. Northampton County Borough (1926), 90 J. P. 82.

1106. *Add. Annotation :*— **Mentd.** Dewhurst *v.* Salford Grdns. (1924), 41 T. L. R. 151.

1126. *Add. Annotation :*— **Reld.** Nixon *v.* Erith U. C., [1924] 1 K. B. 819.

1127a. —— —— **Local authority acting under Housing of Working Classes Act, 1890 (c. 70).**] —The words of sect. 56 of the above Act must be read distributively, & as meaning that if the local authority's district is an urban district it shall have the same power of contracting that an urban sanitary authority has under the Public Health Acts, & if its district is a rural district the power which a rural sanitary authority has under those Acts, with the result that in the former case the authority cannot, when acting under the Act of 1890, contract otherwise than under its common seal if the value or amount of the contract exceeds £50.—NIXON *v.* ERITH URBAN COUNCIL, [1924] 1 K. B. 819; 93 L. J. K. B. 756; 131 L. T. 303; 88 J. P. 115, 40 T. L. R. 373; 68 Sol. Jo. 537; 22 L. G. R. 418, C. A.

1127b. ——] Pltfs. claimed to have a written contract dated Mar. 17, 1921, under which they agreed to erect fifty-eight concrete workmen's dwellings for deft. borough rectified so as to give effect to what was alleged to have been the common intention "of the parties" when the contract was drawn up. The contract was entered into between H. & deft. borough & was under their seal. H. subsequently assigned the contract to pltfs.: *Held:* even if there were a common mistake the contract of Mar. 17, 1921, could not be rectified because, having regard to sect. 174 of the above Act, deft. borough were incapable of entering into a contract with H other than a contract under seal, so that when a tender was made by H. & accepted, there was no contract come to.—HIGGINS (W.), LTD. *v.* NORTHAMPTON COUNTY BOROUGH (1926), 90 J. P. 82.

1131. *Add. Annotation :*—**Reld.** Nixon *v.* Erith U. C., [1924] 1 K. B. 87.

1134a. —— —— —— ——.]—A firm, of which deft. was the sole surviving member, were employed as architects. Four years after the work was completed dry rot broke out in floors laid over concrete, a large area of which was laid on the ground floor of the new buildings. It was alleged that, in correspondence which passed between the parties after the dispute arose, deft., in consideration of the corpn. refraining from suing, undertook to put the work right at his own expense:— *Held:* deft. was liable under the subsidiary contract, although that contract was not under seal, as the seal was unnecessary.—LEICESTER GUARDIANS *v.* TROLLOPE (1911), 75 J. P. 197; 2 Hudson's B. C., 4th ed., 419.

1135. *Add. Annotation :*— **Consd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 819.

1164. *Add. Annotation :*—**Mentd.** Anderson *v* Daniel (1924), 130 L. T. 418.

1176. *Add. Annotation :*—**Reld.** Berners *v.* Fleming, [1925] Ch. 264.

1193. *Add. Annotation :*—**Distd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 87.

1205. *Add. Annotation :*—**Consd.** Michaud *v.* Montreal (City) (1923), 92 L. J. P. C. 161.

Part XI.—Liability and Remedies in Tort.

1225. *Add. Annotation :*— **Reld.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 2 K. B. 832.

1227. *Add. Annotation :*— **Reld.** Welden *v.* Smith, [1924] A. C. 481.

1236. *Add. Annotation :*— **Consd.** Howard—Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

1261. *Add. Annotation :*—**Apld.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299.

1262. *Add. Citations :*—80 J. P. 201; 20 L. G. R. 605.

1266. *Add. Annotation :*—**Reld.** Sorrell *v.* Smith [1925] A. C. 700.

1281. *Add. Annotation :*—**Mentd.** Compania Martiartu *v.* Royal Exchange Assce., [1923] 1 K. B. 650.

Part XII.—Criminal and Quasi-Criminal Proceedings.

1288. *Add. Annotations:*—**Consd.** Griffiths v. Studebakers, [1924] 1 K. B. 102. **Refd.** R. v. Leinster, [1924] 1 K. B. 311.

1297. *Add. Annotation:*—**Refd.** Griffiths v. Studebakers, [1924] 1 K. B. 102.

1304. *Add. Citations:*—27 Cox, C. C. 225; 10 Cr. App. Rep. 131.

After this case add "*See, now*, Criminal Justice Act, 1925 (c. 86), s. 33."

Part XIII.—Delegation of Authority for Particular Purposes.

1313. *Add. Annotation:*—**Refd.** Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.

Part XV.—Legal Proceedings by and against Corporations, their Members and Officers.

1365. *Add. Annotation:* **Refd.** Douchar v. Gas Light & Coke Co., [1925] A. C. 691.

1376. *Add. Annotation:* **Mentd.** *Re* Kent Coal Concessions, Burn v. Kent Coal Concessions, [1923] W. N. 328.

1409. *Add. Annotation:* **Refd.** Everett v. Griffiths, [1924] 1 K. B. 911.

1495. *Add. Annotation:*—**Folld.** R. v. Poplar B. C., *Ex p.* L. C. C., R. v. Poplar B. C. (No. 2), [1922] 1 K. B. 95.

1520. After this case insert "*See, further*, CROWN PRACTICE, Vol. XVI., pp. 105, 406."

1526. *Add. Annotations:*—*As to* (1) **Refd.** New York Life Insce. v. Public Trustee, [1924] 2 Ch. 101; Swedish Central Ry. v. Thompson, [1924] 2 K. B. 255. *As to* (2) **Refd.** Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1527. *Add. Annotations:*—**Refd.** New York Life Insce. v. Public Trustee, [1924] 2 Ch. 101; Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1529. *Add. Annotations:* **Consd.** New Zealand Shipping Co. v. Thew (1922), 8 Tax. Cas. 208; Bradbury v. English Sewing Cotton Co., [1923] A. C. 744; Swedish Central Ry. v. Thompson, [1925] A. C. 495. **Refd.** Badz v. Public Trustee, [1926] Ch. 863.

1532. *Add. Annotation:* **Refd.** Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1536. *Add. Annotation:* **Refd.** Wilcocks v. Pinto (1924), 69 Sol. Jo. 178.

1537. *Add. Annotations:*—**Refd.** New York Life Insce. v. Public Trustee, [1924] 2 Ch. 101; Swedish Central Ry. v. Thompson, [1924] 2 K. B. 255.

1540. *Add. Annotations:*—**Refd.** New York Life Insce. v. Public Trustee, [1924] 2 Ch. 101; Swedish Central Ry. v. Thompson, [1924] 2 K. B. 255.

1557. *Add. Annotation:* **Refd.** Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

PART XV. SECT. 8.

1394 i. *To whom addressed.*]—When mandamus proceedings lie against a municipal corporation, it is the better practice to make parties the members of council & officers whose alleged delinquencies are involved.—R. (READ) v. PEMBINA MUNICIPAL DISTRICT No. 562, [1922] 3 W. W. R. 857; 70 D. L. R. 559.—CAN.

COUNTY COURTS.

Part I.—Courts, Judges and Officers Generally.

14. *Add. Citation :*—15 B. W. C. C. 91.

22. *Add. Annotation :—As to* (1) **Consd.** A. W. *v.* Cooper & Hall, [1925] 2 K. B. 816.

Part II.—Liability and Protection of Judges and Officers of Court.

61. *Add. Annotation :*—**Apld.** Freeborn *v.* Leeming, [1926] 1 K. B. 160.

Part III.—Jurisdiction.

71. *Add. Annotation :*—**Folld.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

71a. **Question of repairs - Under Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17).]**—Deft. was the tenant of a tied public-house with living accommodation, of which pltfs. were the landlords. In 1910, the house was let to deft. at a rent of £75 *per annum* for three years. At all material times the ratable value was £68. After certain intermediate tenancies at rents less than two-thirds of the ratable value, deft. in Dec. 1920, took from pltfs. a new lease: "To hold the said premises with the appurtenances unto the tenant from Mar. 25, 1920, for the term of seven years . . . at the yearly rent of £120." The reason for the increased rent was a trade revival which had caused a great improvement in the licensed trade of the house. The conditions of the new lease as to repairs were more onerous for the tenant than those of the old. In an action by the landlords for rent, the tenant contended that the repairing clause amounted to a prohibited increase:—*Held:* the question as to repairs could only be decided by the county ct., & the High Ct. had no jurisdiction on this point.—BRAKSPEAR (W. H.) & SONS, LTD. *v.* BARTON, [1924] 2 K. B. 88; 93 L. J. K. B. 801; 131 L. T. 538; 40 T. L. R. 607; 68 Sol. Jo. 718.

73. *Add. Annotation :*—**Mentd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

83. *Add. Citation :*—*sub nom.* GLENNIE *v.* DELMAR, 1 L. M. & P. 402.

139a. —— —— **Issue of summons before leave obtained—Irregularity.]**—On Jan. 30, 1924, a tenant of a dwelling-house within the Rent Restrictions Acts lodged two plaints in the West London county ct., the one under sect. 12 (3) of the Act of 1920 for apportionment of rent, & the other under sect. 14 (1) of the same Act for certain sums paid by him in respect of rent which, as he alleged, was irrecoverable by his landlord. These sums were, by sect. 8 (2) of the Act of 1923, recoverable on or before Jan. 31, 1924, but not afterwards. The claim for apportionment could regularly be brought in the West London ct., but the claim for repayment could not be brought in that ct. without the leave of the judge or registrar on an application supported by an affidavit. No affidavit was sworn until Feb. 5, 1924. Notwithstanding this the plaint was entered, a plaint note under the seal of the ct. was given to pltf., & a summons was issued, all bearing the date Jan. 30, 1924. By Ord. 7, r. 2, a summons to appear to a plaint shall be dated of the day on which the plaint was entered, & the date thereof shall be the commencement of the action:—*Held:* (1) the irregular entry of the plaint & issue of the summons before the necessary leave had been obtained did not deprive the county ct. of jurisdiction to hear the action, but the irregularity could be waived by deft.; (2) as deft. had appeared to the summons & raised a defence in no way challenging the jurisdiction of the ct., he had waived the irregularity; the action must therefore be taken to have commenced on Jan. 30, & pltf. was entitled to recover.—PRINGLE *v.* HALES, [1925] 1 K. B. 573; 94 L. J. K. B. 458; 132 L. T. 785, C. A.

147a. —— **Claim for declaration as to future payments—Involving payment of sums exceeding prescribed limit.]**—Where an action was brought in the county ct. to recover a money claim under an agreement, & also for a declaration as to future payments under the agreement:—*Held:* the county ct. judge had no power to make a declaration which might involve the payment of sums of money by deft. in excess of the limit of £100 prescribed by 1888 Act, s. 56.—SMITH *v.* SMITH, [1925] 2 K. B. 144; 94 L. J. K. B. 813; 133 L. T. 345, D. C.

205. *Add. Annotation :*—**Reid.** Rye *v.* Purcell, [1926] 1 K. B. 446.

208. *Add. Annotation :*—**Consd.** Smith *v.* Smith, [1925] 2 K. B. 144.

212. *Add. Annotation :*—**Dist.** Davey *v.* Robinson,

[1923] 1 K. B. 563. Apld. Smith v. Smith, [1925] 2 K. B. 144.

212. After this case add "In remitted action.]—*See* No. 373a, *post*."

249. *Add. Annotations* :— Consd. Rossiter v. Langley, [1925] 1 K. B. 741; Russoff v. Lipovitch (1925), 94 L. J. K. B. 355.

295. *Add. Annotation* :—Refd. Salter v. Lask, [1923] 2 K. B. 798.

297. *Add. Annotation* :—Refd. Salter v. Lask, [1923] 2 K. B. 798.

327a. —— Appearance—Raising defence not challenging jurisdiction.]—PRINGLE v. No. 130a, *ante*.

Part IV.—Remitted Actions.

352. *Add. Citation* :—91 L. J. K. B. 771.

373a. On jurisdiction of county court—Reduction of claim for damages—Alternative claim for injunction.]—Where an action, commenced in the High Ct., has been transferred to a county ct. under 1919 Act, s. 1, the effect of sect. 4 of that Act is to give the county ct. jurisdiction to deal with the matter to or the same as that of the High Ct.

Pltf. & deft. entered into an agreement, which provided that in the event of any breach thereof by deft. he should pay to pltf. in respect of each such breach a sum of £150 by way of agreed & liquidated damages. Pltf. alleged that deft. had broken the agreement, & he brought an action in the High Ct. claiming the sum of £150 & an injunction. Pltf. afterwards applied, under 1919 Act, s. 1, to have the action remitted to a county ct., reducing the money claim to £90, & claiming an injunction in the alternative. The master made an order for remittal. Pltf. then delivered particulars of claim, asking for £90 damages or in the alternative an injunction. He admitted, however, that the real object of the action was to obtain an injunction. On the action coming on for trial the county ct. judge declined jurisdiction on the ground that in substance the action was for an injunction alone. On appeal to a Div. Ct., that ct. held that the county ct. judge had jurisdiction to entertain the action, & sent it back to him for trial:—*Held*: the decision of the Div. Ct. was correct.—DAVEY v. ROBINSON, [1923] 1 K. B. 563; 92 L. J. K. B. 336; 128 L. T. 513; 39 T. L. R. 163; 67 Sol. Jo. 246, C.A.

379. *Add. Annotation* :—Consd. Davey v. Robinson, [1923] 1 K. B. 563.

404a. Duty of county court judge to specify scale of costs.]—In an action remitted from the High Ct. to the county ct., it is advisable that the county ct. judge should specify the scale on which costs are to be taxed. *Semble*: in the absence of any direction by him as to scale, the costs must be taxed in accordance with the scale applicable to the amount

v. FULLER (1926), 134 L. T. 151; 70 Sol. Jo.

410a. Discretion of county court judge—To deprive successful party of costs.]—Where a pltf. has begun an action in the High Ct. & within twenty-one days from issue of the writ has obtained, under R. S. C., Ord. 14, an order in respect of part of his claim whereby he may sign judgment for £20 or upwards either unconditionally or unless that sum is paid into ct. or to pltf.'s solr., & the remainder of pltf.'s claim is remitted to a county ct. with leave to defend, the judge of the county ct. has the same jurisdiction as a judge of the High Ct. over the costs of the whole proceedings, & he may order them to be on the High Ct. or on the county ct. But in deciding the scale on which they are to be taxed he must exercise his discretion judicially, & he is not entitled to deprive pltf. of the High Ct. costs of the High Ct. proceedings unless pltf. has been guilty of some misconduct.—JENKINS & Co. v. SIMON, [1926] 1 K. B. 111; 95 L. J. K. B. 97; 134 L. T. 88; 42 T. L. R. 39; 70 Sol. Jo. 162, D. C.

Part V.—Procedure.

Add. Citations :—91 L. J. Ch. 627, [1922] B. & C. R. 155.

471. *Add. Annotations* :—Mentd. *Re* Rosse, Parsons v. Rosse (1923), 93 L. J. Ch. 8. Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.

472. *Add. Citation* :—20 L. G. R. 567.

497a. —— **Application under Administration of Justice Act, 1920 (c. 81), s. 3—Discretion of judge to order trial without jury.**]—On 10, 1923, pltf. commenced proceedings ; from defts. damages for personal caused by the alleged negligence of defts.' servants. Defts. filed a defence denying negligence & afterwards gave pltf. notice of an application to dispense with a jury.

The application for trial without a jury made under the above sect. The county ct. judge, without giving any reasons for his decision, ordered the trial of the action without a jury, & pltf. appealed against that order & alleged that the learned judge had not properly exercised his discretion:—*Held*: the above sect. did not give the county ct. judge an absolute power to order the trial of an action without a jury; the gave him a discretion which must be cised judicially; in this case there were no proper materials on which the learned judge could exercise his discretion judicially; it would not be a proper exercise of the learned judge's judicial discretion to dispense with a jury merely because it was inconvenient; on

the other hand it is not necessary for the judge to give his reasons for dispensing with a jury, but there must be some grounds for so exercising his discretion.—WINN *v.* LONDON COUNTY COUNCIL (1923), 130 L. T. 350; 88 J. P. 31; 40 T. L. R. 106; 68 Sol. Jo. 502, D. C.

497b. —— **Onus on party objecting to jury.**]—On an application in the county ct. for an order that an action be tried with a jury the county ct. judge is bound in law to make the order asked for, unless the party desiring to dispense with a jury under the above sect. establishes to his satisfaction that the action could be as conveniently tried without a jury. Further, the fact that the lists are l is not a ground on which the county ct. judge is entitled to suspend a litigant's right to trial by jury.—CALCRAFT *v.* LONDON GENERAL OMNIBUS CO., [1923] 2 K. B. 608; 92 L. J. K. B. 1092; 129 L. T. 794; 39 T. L. R. 466; 67 Sol. Jo. 641, D. C.

Annotation:—**Consd.** Winn *v.* L. C. C. (1923), 130 L. T. 350.

499a. —— **Action in which fraud alleged—Whether mere allegation sufficient.**]—To come within the proviso to Administration of Justice Act, 1920 (c. 81), s. 2 (1), a relevant issue of fraud must be raised, which will have to be decided in order to determine the rights of the parties, & it is not sufficient for pltf. merely to allege that deft. acted fraudulently.—EVERETT *v.* ISLINGTON GUARDIANS, [1923] 1 K. B. 44; 92 L. J. K. B. 250; 128 L. T. 447; 87 J. P. 61, D. C.

Part VI.—Trial, Judgment and Execution.

554. *Add. Annotation:*—**Consd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

565. *Add. Annotations:*—**Consd.** Ord *v.* Ord, [1923] 2 K. B. 432; The Koursk, [1924] P. 140; Debenhams *v.* Perkins (1925), 133 L. T. 252.

571. *Add. Annotations:*—**Mentd.** Fairman *v.* Perpetual Investment Bldg. Soc., [1923] A. C. 74; Manton *v.* Brocklebank, [1923] 1 K. B. 400.

582. *Add. Annotation:*—**Mentd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

617. *Add. Citation:*—15 B. W. C. C. 43.

619. *Add. Annotation:*—**Reld.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

645a. —— **Goods already in possession of sheriff.**]—A. W., LTD. *v.* COOPER & HALL, LTD., No. 783a, *post*.

—— **Sum deposited by claimant to goods less than value of goods—More than judgment debt & costs.**]—Goods which had been taken in execution under a county ct. judgment were claimed by a claimant. The execution creditor did not admit the claim & claimant deposited with the bailiff under 1888 Act, s. 156, the sum of £26 which was considerably less than the value of the goods claimed, but was more than sufficient to cover the judgment debt & costs of the execution. The money was paid into ct. by the bailiff, who remained in possession of the goods, & an interpleader summons was issued. Before the return day of the interpleader summons the execution creditor gave notice that he admitted the title of claimant to the goods, & the bailiff withdrew from possession. Upon the taxation of the costs the bailiff claimed possession fees up to the date when the execution creditor admitted claimant's title, upon the ground that under sect. 156 he was bound to remain in possession until the amount of the value of the goods was deposited with him:—*Held:* as the £26 was deposited with & taken by the bailiff under sect. 156 of the Act, he must be deemed to have taken it upon the assumption that it represented the amount of the value of the goods, & therefore he had no right to remain in possession or to possession fees after the date of the deposit.—NEWSUM, SONS & CO., LTD. *v.* JAMES, [1900] 2 K. B. 384; 78 L. J. K. B. 761; 100 L. T. 852; 53 Sol. Jo. 521, D. C.

668. *Add. Annotation:* **Mentd.** Cohen *v.* Roche (1926), L. J. K. B. 915.

Part VII.—Costs.

677. *Add. Annotation:* **Reld.** v. Lipovitch (1924), 69 Sol. Jo. 270.

684. After , Nos. 566-

—— **Order for costs on lower scale.**]—When the amount found due to pltf. is between £20 & £50 the scale of costs applicable is Scale B, & a county ct. judge has no jurisdiction to make an order for costs on a lower scale unless it be shown that pltf.'s action is frivolous or oppressive, or that there has been misconduct or dishonesty on his part.—HUGHES (W.) & SON *v.* SATCHELL (1925), 134 L. T. 93, D. C.

—— **In remitted action.**]—JENKINS & Co. *v.* SIMON, No. 410a, *ante*.

——.]—Pltf.'s motor car, whilst being driven by his wife, was injured, as pltf. alleged, through the negligent driving of a motor lorry by a servant of defts. At the trial of the action in the county ct. the judge held that both sides were to blame, & gave judgment for defts., but allowed no costs. On appeal on the question of costs:—*Held:* on the facts found at the trial there had been negligence on the part of pltf.'s wife, & therefore pltf. could not have succeeded whether there had or had not been negligence on the part of defts., & the county ct. judge had no discretion to deprive the successful defts. of their costs.—JACKSON *v.* ANGLO-AMERICAN OIL CO., [1923] 2 K. B. 601; 92 L. J. K. B. 1000; 129 L. T. 792; 67 Sol. Jo. 640, D. C.

695b. —— **Order for costs on lower scale.**]—On a claim by an unsuccessful deft. against an

insurance co. as third parties, for indemnity to an amount exceeding £50, judgment was given for the third parties. The county ct. judge, without giving any reasons, ordered the unsuccessful defts. to pay costs to the third parties on Scale B, applicable to cases where the amount does not exceed £50, the scale where that amount exceeds £50 being Scale C. It was not suggested that any facts existed to justify a special direction as to costs under 1888 Act, s. 113:—*Held:* there was no jurisdiction to make the order.—BEVINGTON v. PERKS & BELL ASSURANCE SOCIETY, [1925] 2 K. B. 229; 94 L. J. K. B. 829; 133 L. T. 511, D. C.

v. Lobell (1925), 134 L. T. 93.

750. —N.F. Warwick v. Butler Lauritzen, [1925] 2 K. B. 204.

750a. —]—Where under the above rule the registrar, on the application of a deft. who alleges that he neither resides nor carries on business within twenty miles from the ct., makes an order directing pltf. to deposit in ct. a sum of money as security for the costs of deft., the county ct. judge under r. 11, sub-r. 8, has power to vary or rescind the order so made. WARWICK v. BUTLER & LAURITZEN, [1925] 2 K. B. 204; 94 L. J. K. B. 657; 133 L. T. 240, D. C.

Part VIII.—Appeals.

763a. —]—WARWICK v. LAURITZEN, No. 750a, *ante*.

776. *Add. Annotation:* **Mentd.** Edwards v. Porter (1924), 41 T. L. R. 57.

776a. **Debt or damage claimed not exceeding £20.**]—An appeal to the High Ct. against the decision of a county ct. judge granting a new trial is an appeal "in an action" within 1888 Act, s. 120, & where the debt or damage claimed did not exceed £20 the High Ct. has no jurisdiction to hear the appeal unless applt. has obtained leave of the county ct. judge to appeal.—WARD v. SNEIMAN, 131 L. T. 560; 41 T. L. R. 598, D. C.

of the sheriff did not in the circumstances prevent the high bailiff from taking & keeping such possession as would entitle him to claim fees; (3) there was evidence to support the finding of the county ct. judge that the high bailiff did not withdraw from possession, but kept actual as distinct from walking possession; & therefore the order of the county ct. was right.—A. W., LTD. v. COOPER & HALL, LTD., [1925] 2 K. B. 816; 94 L. J. K. B. 831; 133 L. T. 508.

783a. **Order for payment of possession fees of high bailiff—Under Ord. 27, r. 1 (2).**]—(1) A Div. Ct. has jurisdiction to hear an appeal from the decision of a county ct. judge who, under the above sub-rule has, on the application of the high bailiff, made an order against the execution creditors, who have directed the high bailiff to withdraw, for the payment of his fees.

On May 15, 1924, the high bailiff of a county ct. under a warrant of execution purported to levy upon the goods of judgment debtors at their premises, & put a man in possession. The sheriff was then in possession of the goods under process of an earlier date, but not to the knowledge of the high bailiff, as the county ct. judge found. The high bailiff on taking possession received from judgment debtors a document which stated that in consideration of his withdrawing from possession they authorised him at any time to re-enter & undertook not to remove any of the goods. On June 12, 1924, the high bailiff on the instruction of the judgment creditors withdrew from possession. The execution was ineffective, except in so far as it brought the parties into negotiation with a view to a settlement. The high bailiff made an application to the county ct. judge under the above rule, for an order for payment by the judgment creditors of his fees for keeping possession from May 15 to June 12. The county ct. judge found that the high bailiff did not withdraw from possession, but was in actual possession & not in mere walking possession of the goods, & made an order for payment of the fees claimed:—*Held:* (2) the

789. *Add. Annotations:* **Consd.** Ward v. S (1925), 133 L. T. 560. **Mentd.** Nunno v. Connell, [1924] A. C. 595.

809. *Add. Annotation:* **Refd.** Cohen v. Roche (1926), 95 L. J. K. B. 918.

810. *Add. Annotations:* **Mentd.** *Re* Rosse, Parsons v. Rosse (1923), 93 L. J. Ch. 8; Performing Right Soc. v. Mitchell & Booker, [1924], 1 K. B. 762.

818. v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

832. *Add. Annotations:* *As to* (1) **Distd.** Martin v. Stanborough (1924), 41 T. L. R. 1. **Refd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75.

842. *Add. Annotation:* **Mentd** Gregg v. Ru

851. After
reference: **Order directing arbitrator under Agricultural Holdings Acts to state special case.**] *See* AGRICULTURE, No. 20

853. *Add. Annotation:* **Mentd.** Credit Co. of Canada v. Fulton, [1923] A. C. 708.

900. *Add. Citation:* 20 L. G. R. 653.
Add. Annotations: **Mentd.** Aston v. Smith, [1924] 2 K. B. 143; Precious v. Reedie, [1924] 2 K. B. 149; Queen's Club & Estates v. Bignell, [1924] 1 K. B. 117.

913. *Add. Annotation:* **Refd.** Simmons v. Cr [1922] 2 K. B. 95.

933. *Add. Annotations:* **Mentd.** Llewellyn v. Turner (1922), 126 L. T. 532; Mac Gra Ltd. v. Cathcart (1922), 38 T. L. R. 562.

938. *Add. Annotation:* **Distd.** Rackham v. Tabrum (1923), 129 L. T. 24.

945. *Add. Annotation:* **Refd.** United States Shipping Board v. Strick, [1926] A. C. 545.

Part IX.—Certiorari, Prohibition and Mandamus.

979. *Add. Annotation :*— **Apld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

980a. —— Not action voluntarily brought in county court not having jurisdiction.]—(1) A pltf. who voluntarily sues in a county ct. which, owing to a defence there raised, has no jurisdiction, is not entitled to remove the proceedings to the High Ct. by *certiorari*.

(2) If such a pltf. succeeds in obtaining an *ex parte* order for *certiorari* deft. need not enter an appearance in the High Ct. Pltf. is not entitled to judgment in default of appearance, & such a judgment, if obtained by him, will be set aside for irregularity.—GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom.* PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, 129 L. T. 438.

1008a. On obligation of defendant to appear—Judgment in default of appearance—Validity.] —GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, No. 980a, *ante*.

1016. *Add. Annotation :*—**Reld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

1038. *Add. Annotation :*—**Consd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38. **Reld.** Hunter *v.* Stadtische Hochseefischerei Gemeinnützige Gesellschaft (1925), 133 L. T. 488.

1064. *Add. Annotation :*—**Apld.** Pringle *v.* Hales, [1925] 1 K. B. 573.

Part XII.—Statutes Conferring Special Jurisdiction.

1146. In the cross-reference following this case for "*See, generally*, INDUSTRIAL, PROVIDENT & SIMILAR SOCIETIES" read "*See, generally*, INSURANCE."

CRIMINAL LAW AND PROCEDURE.

NOTE.—After June 1, 1926, *see* Criminal Justice Act, 1925 (c. 86).

Part I.—Principles of Criminal Liability.

3. *Add. Annotations* :—**Consd.** Sorrell v. Smith, [1925] A. C. 700. **Reld.** British Oxygen Co. v. Liquid Air, [1925] Ch. 383. **Mentd.** Brimelow v. Casson, [1924] 1 Ch. 302; Sorrell v. Smith, [1924] 1 Ch. 596; Thompson v. British Medical Assocn., [1924] A. C. 764.

22. *Add. Annotation* :—**Reld.** Jarvis v. Surrey County Council, [1925] 1 K. B. 554.

23. *Add. Annotation* :—**Reld** Jarvis v. Surrey County Council, [1925] 1 K. B. 554.

38. *Add. Annotation* :— **Reld.** R. v. Denyer, [1926] 2 K. B. 258.

40. *Add. Annotation* :—**Consd.** Allard v. Selfridge (1924), 88 J. P. 204.

40a. Right of defendant to give evidence - As to his state of mind.]—(1) Evidence that deft. is an accessory after the fact does not support an indictment for being a principal, or accessory before the fact.

(2) On the question of *mens rea*, deft. is entitled to give evidence of the state of his mind at the relevant time. - R. v. FITZPATRICK (1926), 19 Cr. App. Rep. 91, C. C. A.

45. *Add. Annotation* :—**Folld.** Bridges v. Griffin, [1925] 2 K. B. 233.

47. *Add. Annotation* :—**Mentd.** Rodbourne v. Hudson (1924), 41 T. L. R. 132.

55. *Add. Annotation* :—**Reld.** Anderson v. Daniel (1923), 130 L. T. 418.

72a. Refusal to maintain wife & family.] It is no defence to a charge of "wilfully refusing & neglecting to maintain" a wife & family, whereby they have become chargeable to the common fund of a union, that the husband *bona fide* but erroneously believed that he was not legally bound to maintain them in the circumstances. *Mens rea* is immaterial.

Biggs v. Burridge (1924), 89 J. P. 75; 22 L. G. R. 555, D. C.

167. *Add. Annotation* : **Reld.** R. v. Denyer, [1926] 2 K. B. 258.

177. *Add. Annotation* : **Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

178. *Add. Annotation* : **Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791

212. *Add. Annotation* : *As to* (3) **Consd.** R. v. Bailey, [1924] 2 K. B. 300.

230a. [illegible] The C. of Criminal Appeal has no power to alter the rules in *McNaghten's Case*, No. 228, *ante*. R. v. FLAVELL (1926), 19 Cr. App. Rep. 141, C. C. A.

244a. *S.P.* R. v. Kopsen (1925), 19 Cr. App. Rep. 50, C. C. A.

302. *Add. Annotation* : *As to* (1) **Consd.** R. v Bateman (1925), 94 L. J. K. B. 791.

306. *Add. Annotation* : **Reld.** R. v. Canham (1925), 18 Cr. App. Rep. 163.

417. *Add. Annotations* : **Consd.** A. G. for Straits Settlmt. v. Pang Ah Yew, [1925] A. C. 555. **Reld.** Badman v. R., [1924] 1 K. B. 64.

466. *Add. Annotation* : **Reld.** Lake v. Simmons (1926), 95 L. J. K. B. 586.

PART I. SECT. 1.

8a. *Misdemeanour.*] — *Semble* : at common law disobedience to a statute is a misdemeanour. — O'DEA v. MIDWIVES REGISTRATION BOARD (1924), 26 W. A. L. R. 129.— **AUS.**

24 l. *Statutory offences* — " *Offence.*" — *Prevention of Crimes Act*, 1871 (c. 112), s. 7.]—STRATHERN v. PARDEN, [1926] S. C. (J.) 9.— **SCOT.**

PART I. SECT. 2, SUB-SECT. 2.—B.

59 l. *Notification of contagious disease —Public Health Act, R. S. O.*, 1914 (c. 218), s. 55 (1).]—Where deft., a qualified medical practitioner, honestly believed that a disease was not communicable :—*Held* : there was no *mens rea*, & he could not be guilty of a criminal offence.—R. v. GORDON, [1924] 2 D. L. R. 358; 42 Can. Crim. Cas. 26; 54 O. L. R. 355.—**CAN.**

o (p. 35) l. [illegible] —*Mens rea* is an essential ingredient of the offence of possessing apparatus suitable for the manufacture of spirits contrary to Inland Revenue Act, s. 180 (c). This does not mean that guilty motive or intention must be shown. *Mens rea* can be shown by the presumptions of fact which may be raised against accused by the nature of the apparatus found in his possession & the circumstances surrounding that possession.— R. (JACKSON) v. ROTCHESON, [1925] 3 W. W. R. 744.—**CAN.**

ob. *Keeping beer over legal strength* — *Ontario Temperance Act*, 1916 (c. 50), s. 40.] *Held* : *mens rea* necessary element. - R. v. HYDE, [1925] 2 D. L. R. 958; 44 Can. Crim. Cas. 1. - **CAN.**

sd. [illegible] - *Held* : *mens rea* not necessary element. - R. v. BURKE, [1925] 3 D. L. R. 625, 44 Can. Crim. Cas. 234. **CAN.**

PART I. SECT. 3, SUB-SECT. 3. B.

o. Delete the word "not."

PART I. SECT. 5, SUB-SECT. 2. B. (c).

245 lll. — [illegible] The driver of a motor car was charged with causing the death of a pedestrian by his reckless driving. He stated that he was not guilty "in respect that by the incidence of temporary mental dissociation due to toxic exhaustive factors he was unaware of the presence of deceased on the highway & of his injuries & death, & was incapable of appreciating his immediately previous & subsequent actions." It was not disputed that the pedestrian's death had been caused by the excessive speed & dangerous manœuvring of the car :—*Held* : if accused was otherwise in a condition which justified his driving a car, & if, through no fault of his own & for some cause outwith his control & which he was not bound to foresee, he became either gradually or suddenly not master of his action, through some mental defect, & was in that state at the time of the accident, the jury were entitled to return a verdict of not guilty. H.M. ADVOCATE v. BRUCE, [1926] S. C. (J.) 15.— **SCOT.**

PART I. SECT. 5, SUB-SECT. 3. A.

h l. [illegible] WARYAM SINGH v. R. (1926), 1 L. R. 7 Lah. 141 **IND.**

PART I. SECT. 5, SUB-SECT. 3. B.

297 iv. [illegible] Evidence of drunkenness falling short of a proved incapacity in any mind to form the intent necessary to constitute the crime, & merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. SHIBU & GAMA v. R. (1923), I. L. R. 7 Lah. 56. **IND.**

PART I. SECT. 6, SUB-SECT. 2. B.

456 iv. [illegible] —Where several persons join in beating another with *lathis*, & inflict such serious injuries on him that he dies shortly after the beating, all are guilty of the offence of murder without distinction. - R. v. UMRAO (1923), I. L. R. 45 All. 727.— **IND.**

456 v. [illegible] —The doing to death of one person at the hands of several persons, in circumstances in which it could never be known by which hand life was actually extinguished, amounts to murder, & not merely attempted murder, on the part of each of the persons concerned.— GREEN v. R. (1924), 41 T. L. R. 27; L. R. 52 Ind. App. 40.— **IND.**

708a. —— **Not supported by evidence that defendant accessory after the fact.**]—R. *v.* FITZPATRICK, No. 40a, *ante*.

732a. — .]—R. *v.* FITZPATRICK, No. 40a, *ante*.

812. *Add. Annotations* :—**Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383. **Mentd.** Brimelow *v.* Casson, [1924] 1 Ch. 302; Sorrell *v.* Smith, [1924] 1 Ch. 506; Thompson *v.* British Medical Assocn., [1924] A. C. 764.

814. *Add. Annotations* :—*As to* (2) **Consd.** Sorrell *v.* Smith, [1925] A. C. 700. *Generally*, **Refd.** G. W. K. *v.* Dunlop Rubber Co. (1926), 42 T. L. R. 376. **Mentd.** Brimelow *v.* Casson, [1924] 1 Ch. 302.

902. *Add. Annotation* :—**Refd.** R. *v.* Gordon (1925), 133 L. T. 731.

930. *Add. Annotation* :—**Refd.** R. *v.* Luberg (1926), 135 L. T. 411.

Part II.—Original Criminal Jurisdiction.

988. *Add. Annotation* :—**Mentd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1004. *Add. Annotation* : **Mentd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

1007. *Add. Annotation* :—*Generally*, **Mentd.** R. *v.* Evening Standard, *Ex p.* Public Prosecutions Director, R. *v.* Manchester Guardian, *Ex p.* Same, R. *v.* Daily Express, *Ex p.* Same (1924), 40 T. L. R. 833.

1016a. Power to order payment of taxes in respect of honorarium payable to clerk of court.]—An order made by the Central Criminal Ct. directing that any taxes demanded by the Inland Revenue authorities in respect of an honorarium payable to the clerk of that ct. shall be paid by the public bodies by which the salaries of the ct.'s officials are payable is not invalid & not in excess of the powers of the ct. under Central Criminal Ct. Act, 1834 (c. 36). R. *v.* CENTRAL CRIMINAL COURT JJ., *Ex p.* LONDON COUNTY COUNCIL, [1925] 2 K. B. 43; 94 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 731, D. C.

1022a. —.]—R. *v.* DEVON JJ., *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, No. 1138*a*, *post*.

1079a. Fraudulent conversion begun abroad Receipt of proceeds in England.]—A fraudulent conversion begun abroad, even though triable there, but completed by receipt of the proceeds in this country, is justiciable in this country.—R. *v.* LYLE (1921), 18 Cr. App. Rep. 59, C. C. A.

1100. *Add. Annotation* : **Refd.** The Fagernes, [1926] P. 185.

1101. *Add. Annotation* : **Consd.** The Fagernes, [1926] P. 185.

1124. *Add. Annotations* : *As to* (2) **Refd.** The Fagernes, [1926] P. 185. *As to* (4) **Refd.** The Fagernes, [1926] P. 185.

1138. For the existing paragraph in original volume substitute the following paragraph:—

——.]—A person on board one of His Majesty's ships, which was then in commission & lying in the tidal waters of the Firth of Forth above the Forth Bridge, was alleged to have committed larceny as a clerk or servant to the Navy, Army & Air Force Institutes. He was placed under arrest by an executive officer of the ship, &, some days later, by which time the vessel had arrived in Torbay, he was apprehended by the Devon police & charged before the justices, who committed him for trial at the Devon quarter sessions. The indictment charged an offence contrary to Larceny Act, 1916 (c. 50), s. 17 (1) (a), committed on the high seas. Prisoner was arraigned & pleaded not guilty & a jury was impanelled, but quarter sessions declined to proceed with the indictment upon the ground that Larceny Act, 1861 (c. 96), s. 115, which was said to give them jurisdiction, did not extend to offences committed in estuaries or rivers in Scotland, & that the offence charged was properly triable only by the Scottish cts.:—*Held*: quarter sessions had jurisdiction to try the indictment inasmuch as it alleged an offence which, by virtue of Naval Discipline Act, 1866 (c. 109), was committed within the jurisdiction of the Admlty. of England, & therefore, being an offence mentioned in Larceny Act, 1861, it was triable, under sect. 115 of that Act, in the county where the offender was apprehended.—R. *v.* DEVON JJ., *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, [1924] 1 K. B. 503; 93 L. J. K. B. 284; 130 L. T. 640; 88 J. P. 73; 40 T. L. R. 213; 68 Sol. Jo. 422; 27 Cox, C. C. 593, D. C.

PART I. SECT. 6, SUB-SECT. 3. B. (a).

n i. —.] A person cannot be said to have aided & abetted another, where the latter had no consciousness of his act & exercised no volition in the matter. R. *v.* RASCOL, [1924] App. D. 41.—**S. AF.**

PART I. SECT. 6, SUB-SECT. 6. D.

af. *Charge of assault with intent to commit rape. Accused to charge of attempted rape.*—R. *v.* MACINTYRE (1925), 43 Can. Crim. Cas. 356.—**CAN.**

PART I. SECT. 6, SUB-SECT. 7. A.

h i. —.]—Every person of legal responsibility who knowingly & voluntarily co-operates with, or aids or assists or advises or encourages another in the commission of a crime is an accomplice, without regard to the degree of his guilt.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 337.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8. A.

ai. —]—Conspiracy cannot exist unless two or more persons are parties to an agreement to do an illegal act, or to do a legal act illegally, both knowing, or being deemed to know, that the carrying out of the purpose involves the commission of an indictable offence.—R. *v.* SPROAL, [1925] 4 D. L. R. 762; Q. R. 39 K. B. 436.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—C.

835 i. *Husband & wife.*]—Husband & wife cannot conspire together so as to be guilty of the crime of conspiracy.—R. *v.* MCKECHIE, [1926] N. Z. L. R. 1.—**N.Z.**

PART I. SECT. 6, SUB-SECT. 8.—N.

894 ii. ——.]—R. *v.* BOOKHALTER & LANIN, [1924] 3 D. L. R. 122; 42 Can. Crim. Cas. 186.—**CAN.**

Part III.—Limitation of Time for Criminal Proceedings.

1269. *Add. Annotation :* **Apld.** R. v. Hewitt (1925), 89 J. P. Jo. 721.

Part IV.—Bail.

1416. *Add. Annotations :* **Apld.** R. v. Williams (1925), 19 Cr. App. Rep. 67. **Mentd.** R. v. Dennis, R. v. Parker, [1924] 1 K. B. 867.

1436a. **When term of imprisonment short.**] In the case of a short sentence, where an appeal cannot be speedily heard, the ct. may grant bail. R. v. SELKIRK (1925), 18 Cr. App. Rep. 172, C. C. A.

1445. *Add. Citation :* 87 J. P. Jo. 536.

Part V. Proceedings Preliminary to Indictment.

1458. *Add. Annotation :* **Reld.** Conn v. Turnbull (1925), 89 J. P. Jo. 300.

1459. *Add. Annotation :* **Reld.** Conn v. Turnbull (1925), 89 J. P. Jo. 300.

1484. *Add. Citation :* 31 T. L. R. 401.

1583. *Add. Annotation :* **Reld.** Glamorgan County Council v. Glasbrook, [1924] 1 K. B. 879.

1611. *Add. Annotation :* **Mentd.** Prager v. Blatspiel, [1924] 1 K. B. 566.

PART IV. SECT. 1.

1331 va. [illegible] R. v. COOPER & BLOOM (1924), 13 Can. Crim. Cas. 321. **CAN.**

mf. [illegible] Criminal Code s. 696, provides that where the offence is punishable by imprisonment for more than five years a justice of the peace, jointly with some other justice, may in certain circumstances admit the accused to bail. The justice has no jurisdiction to take the recognizances, &, if he does so, no liability is imposed, at least no liability which can be enforced in a summary manner. R. v. MOORE, [1924] 1 W. W. R. 111; 41 Can. Crim. Cas. 161; 18 Sask. L. R. 60. **CAN.**

sg. *Amount of bail. Power to increase.*]—Bail was fixed by a magistrate at the close of a preparatory examination of accused who was committed for trial. The examination was reopened to ascertain whether accused admitted eight previous convictions. Upon his admission, prosecutor applied for an increase of bail, which the magistrate granted. Accused then applied for an order that the bail as originally fixed should stand. *Held:* it was competent for the magistrate to reconsider the amount of the bail.—SWART v. R. (1923), 41 N. L. R. 153.—**S. AF.**

sh. *Effect of bail. Whether reckoned as part of imprisonment.*] The time during which prisoner is out on bail under an order for bail made at his request cannot be reckoned as part of his term of imprisonment, even though such order was *ultra vires*. R. v. IACI, [1925] 2 W. W. R. 129, 43 Can. Crim. Cas. 365. **CAN.**

si. [illegible] The time of imprisonment for an offence against Manitoba Temperance Act does not continue to run while prisoner is out on bail pending an appeal. R. v. Sipes, [1925] 3 D. L. R. 361; [1925] 2 W. W. R. 325; 44 Can. Crim. Cas. 60; 35 Man. L. R. 151.—**CAN.**

sk. *Entertainment of bail.*]—The procedure to be followed on an application to entertain bail is to be found in Bail Act, s. 12 (2).—R. v. Brown (1923), 33 B. C. R. 297.—**CAN.**

sl. [illegible] *Application to remand—Appeal.*]—No appeal lies from the refusal by a county ct. judge of a motion to grant & discharge the accused of appellant's bail bond. R. v. SCHNEIDER (1923), 40 Can. Crim. Cas. 206; 56 O. L. R. 210. **CAN.**

PART IV. SECT. 4.

1361 v. [illegible] R. v. SMITH (1924), 44 Can. Crim. Cas. 128. **CAN.**

oi. [illegible] The application of the Act to the giving of bail, while entitled to great weight, does not bind the discretion of the ct. THE STATE v. DILLON & PUTNAM (1925), 31 L. T. 111. **IR.**

PART IV. SECT. 8.

1401 v. [illegible] Where a police magistrate refused to allow accused to be released on bail pending the preliminary hearing, an application by way of *habeas corpus* for accused's release on bail was granted. R. v. MACDONALD, [1925] 2 W. W. R. 613. **CAN.**

PART IV. SECT. 12.

sm. *Grounds for granting.*] While it is not possible to lay down an invariable rule as to when a person convicted of an offence & sentenced to imprisonment, who appeals against his conviction, should or should not be admitted to bail pending the determination of his appeal, it is important to bear in mind that every one is presumed to be innocent until legally convicted, & that so far as is humanly possible the law should be so administered as not to do injustice to an innocent person. R. v. SMITH, R. v. HAINARD (1924), 43 Can. Crim. Cas. 24; 56 O. L. R. 214. **CAN.**

sn. *By Supreme Court of Canada.*]—A judge of the Supreme Ct. has no jurisdiction to admit to bail an accused person pending his appeal upon jurisdiction being conferred by Criminal Code, s. 1019 (1), upon the Chief Justice of the appellate ct. or a judge of that ct. designated by him. STEELE v. R., (1924) 2 D. L. R. 470; [1924] S. C. R. 1; 42 Can. Crim. Cas. 47.—**CAN.**

so. [illegible] *Time for entering into recognizance.*]—On an appeal from a summary conviction, since there is now no time limit for filing the notice of appeal under Criminal Code, s. 750, there is no time limit for entering into the recognizance which may be given under sub-sect. c. R. v. BARILKO, [1924] 4 D. L. R. 842; 3 W. W. R. 121. **CAN.**

sp. [illegible] R. v. DESJARLAIS, [1924] 3 W. W. R. 114. **CAN.**

PART V. SECT. 1, SUB-SECT. 2. A.

1498 f. *Necessary to inform prisoner under what power constable acting.*] A person about to be arrested is entitled to know under what power the constable is arresting him &, if he specifies a certain power, which the person knows the constable has not got, he is entitled to object to such arrest & escape from custody, such custody not being a lawful one. ARRAMANT: MUKERJEE v. R. (1924), I. L. R. 47 Mad. 442. **IND.**

sq. *Second arrest justified. First arrest irregular.*—*Ex p.* MACKENZIE, [1925] 2 D. L. R. 212, 43 Can. Crim. Cas. 206. **CAN.**

PART V. SECT. 1, SUB-SECT. 2. E. (b).

1555 v. [illegible] Telegram from the "police" of a Native State which, in addition to personal description of the fugitive & suggestions of his possible movements, merely alleged that he was wanted for embezzlement of money to the value of two lakhs, do not constitute credible information or reasonable suspicion sufficient to justify his arrest without a warrant in British India. EMPEROR CHANDRA ROY CHOWDHURY v. R. (1924), I. L. R. 52 Calc. 319. **IND.**

PART V. SECT. 1, SUB-SECT. 2. E. (c).

si. *Liquor Act, R. S. A., 1922* c. 220, s. [illegible] Two police officers, suspecting that accused sold liquor contrary to the above Act, went to his premises &, without disclosing their identity, asked him to serve them with liquor, which he did. Having consumed the liquor they ordered more, which was being served but not consumed when, disclosing their identity, they arrested accused without a warrant. *Held:* accused was "found actually committing" an offence, & could be arrested without a warrant.—R. v. HILLS, [1924] 1 W. W. R. 951; 41 Can. Crim. Cas. 329, 20 Alta. L. R. 156. **CAN.**

spiel, Stamp & Heacock, [1924] 1 K. B. 566.

1622. *Add. Annotation:*—**Folld.** Isaacs v. Keech, [1925] 2 K. B. 354.

1622a. — **Town Police Clauses Act, 1847 (c. 89), s. 28.**]—Under the above sect. in order to entitle a constable to take a person into custody without a warrant it is not necessary that the person should be in fact committing the offence, provided that the constable honestly & on reasonable grounds believes that the person is committing it.—ISAACS v. KEECH, [1925] 2 K. B. 354; 94 L. J. K. B. 670; 133 L. T. 317; 89 J. P. 189; 41 T. L. R. 432; 23 L. G. R. 444; 28 Cox, C. C. 22, D. C.

1704a. — **To rehear charge—Justices equally divided.**]—Appet. was charged with the indictable offence of causing grievous bodily harm by the reckless & wanton driving of a motor car. The justices were equally divided on the question whether appet. should be committed for trial, & they decided that appet. was not, in these circumstances, entitled to be discharged, & that they would adjourn & have the case reheard on a later date by a reconstituted bench. Appet. then obtained a rule *nisi* for a mandamus to the justices to order his discharge in pursuance of Indictable Offences Act, 1848 (c. 42), s. 25:—*Held:* under that sect. the duty of the justices to discharge the accused arose only when they had reached an actual opinion that the evidence was not sufficient to put the accused upon his trial, &, as they had not reached such an opinion, they were entitled to adjourn the hearing for the purpose of having the bench reconstituted, & the rule must be discharged.—R. *v.* HERTFORDSHIRE JJ., *Ex p.* LARSEN, [1926] 1 K. B. 191; 95 L. J. K. B. 130; 134 L. T. 143; 89 J. P. 205; 42 T. L. R. 77; 28 Cox, C. C. 90, D. C.

1793. *Add. Annotation:*—**Consd.** R. *v.* Beebe (1925), 133 L. T. 736.

1794. *Add. Annotation:*—**Reld.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

1798a. **Several prisoners charged on same facts—Differentiation of charges—One prisoner punishable summarily—Other prisoner punishable on indictment.**]—When charges are to be brought against more than one prisoner on the same set of facts, it is desirable that the charges should not be so differentiated that one prisoner is tried by a jury, while another has no right to such mode of trial, unless there is good reason to the contrary.—R. *v.* COPE (1925), 94 L. J. K. B. 662; 132 L. T. 800; 89 J. P. 100; 41 T. L. R. 418; 27 Cox, C. C. 778; 18 Cr. App. Rep. 181, C. C. A.

1810a. *Add. Citations:*—[1924] 1 K. B. 248; 93 L. J. K. B. 65; 130 L. T. 414; 27 Cox, C. C. 581.

PART V. SECT. 1, SUB-SECT. 2.—F. (b).

sp. *Inclusion of words not applicable.*] Where deft.'s arrest was justified, as he was not prejudiced in any way.—*Held:* application for his discharge should be dismissed, notwithstanding the inclusion in the warrant of words which were not applicable & should have been omitted.—(OVERSEERS OF THE POOR v. MARRYATT (1924), 42 Can. Crim. Cas. 132, 57 N. S. R. 313. **CAN.**

PART V. SECT. 1, SUB-SECT. 2.—F. (c).

1674 ll. —.] Where an arrest is not justified without a warrant, it is necessary for the constable making the arrest to have the warrant in his personal possession, even although the person arrested does not demand its production. It is not sufficient that a warrant has been issued directed to "all or any of the police officers" of the province, & is in possession of a constable on whose instructions by telephone another constable at a different place makes the arrest & delivers the person arrested to the constable who holds the warrant.—R. *v.* LASPER, [1924] 3 D. L. R. 503; 2 W. W. R. 610, 20 Alta. L. R. 415.—**CAN.**

ai. *Accused illegally under arrest without warrant.*]—Where, when a warrant was issued, accused was illegally under arrest because previously arrested without a warrant:—*Held:* it did not affect the validity of the warrant.—R. *v.* HARILKO, [1924] 1 W. W. R. 60; 41 Can. Crim. Cas. 193; 20 Alta. L. R. 126.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.

d i. — *By other constables acting in concert.*]—The authority given by a search warrant to the constable to whom it is addressed extends to the other constables acting in concert with him under it.—R. *v.* DIAMOND, [1924] 1 D. L. R. 1033; 1 W. W. R. 444; 42 Can. Crim. Cas. 90; 20 Alta. L. R. 60.—**CAN.**

i i. — *Validity of information.*]—The ct. refused to set aside a search warrant issued under the above Act, where the grounds of suspicion were written on a separate piece of paper attached to the information but not initialled.—R. *v.* WILSON, *Ex p.* HARRINGTON (1911), 40 N. B. R. 384.—**CAN.**

l ii. — —.]—A search warrant issued under the above Act will be quashed where no grounds of suspicion are stated in the information.—R. *v.* NICKERSON, *Ex p.* WESTON (1911), 40 N. B. R. 382. **CAN.**

PART V. SECT. 2, SUB-SECT. 1.

a i. — —.]—R. *v.* MLAKER, [1923] 2 W. W. R. 296; 39 Can. Crim. Cas. 384.—**CAN.**

a ii. — *To try charge without inquiring as to arrest.*]—Where an accused person is before a magistrate who has jurisdiction over the offence, the magistrate need not inquire how he came there, but may proceed to try the case, notwithstanding objection by accused that he was wrongfully arrested without warrant.—R. *v.* ALBERTS, [1924] 2 D. L. R. 863; 1 W. W. R. 863.—**CAN.**

c i. — —.]—If accused be found guilty of a lesser included offence, it is unnecessary to amend the charge.—QUN *v.* R., [1924] 4 D. L. R. 182.—**CAN.**

• i. — — *To hear charge on subsequent information—Prior illegal arrest.*]—If a person is duly charged with an offence on an information under oath, & is arrested on a warrant duly issued & brought before the magistrate, the magistrate's jurisdiction is not ousted by the fact that at the time of the information & arrest accused was under detention as the result of an illegal arrest without warrant.—R. *v.* JOHNSON, [1924] 3 D. L. R. 470; 1 W. W. R. 828; 34 Man. L. R. 100.—**CAN.**

• ii. — — *Prior illegal search.*]—*Held:* assuming a search to have been illegal, it did not affect subsequent proceedings under a warrant, & there was nothing to affect the jurisdiction of the magistrate.—R. *v.* DIPENTA (1924), 42 Can. Crim. Cas. 152; 57 N. S. R. 204.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

1801 i. *Form of commitment—Omission of time of offence.*]—A warrant of commitment did not comply with Summary Convictions Act, R.C., 1915, in not fixing the time when the offence was committed:—*Held:* bad.—R. *v.* RODGERS, [1923] 3 W. W. R. 955; 41 Can. Crim. Cas. 190; 33 B. C. R. 16.—**CAN.**

1801 ii. — *Error in statutory description of offence.*]—The use in the warrant of commitment of the words "ceremony of marriage" instead of "form of marriage," as in the statutory description, is no ground for setting aside a conviction, the meaning in both cases being the same & not distinguishable.—R. *v.* ROOP, [1924] 3 D. L. R. 985; 57 N. S. R. 323.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.

av. *Estreatment of recognizance.*]—The estreating of a recognizance by a magistrate may be carried out under Criminal Code, s. 1099, & any further necessary proceedings follow under the subsequent sects. without the requirement of any order of the ct.—R. *v.* McCOY & BROWN (1924), 34 B. C. R. 14.—**CAN.**

aw. — —.]—R. *v.* MARRIOTT (1924), 57 N. S. R. 227.—**CAN.**

ax. — — *When ordered.*]—R. *v.* LEPICKI, [1925] 4 D. L. R. 170; [1925] 2 W. W. R. 726; 44 Can. Crim. Cas. 263.—**CAN.**

az. — — — *One surety bound instead of two.*]—R. *v.* CARVERT, *Ex p.* HOWE, [1925] 3 D. L. R. 414; 44 Can. Crim. Cas. 69.—**CAN.**

ba. — — *Avoidance of.*]—R. *v.* MACDONALD (1925), 43 Can. Crim. Cas. 381.—**CAN.**

1810b. —— How proved.]—(1) An appeal lies to the Ct. of Criminal Appeal against a sentence passed on an alleged breach of a recognisance to be of good behaviour for a certain time, on the ground that applt. has not broken the recognisance.

(2) Breach of recognisance must be proved like any other fact alleged in a criminal ct. —R. v. Smith, [1925] 1 K. B. 603; 94 L. J. K. B. 592; 132 L. T. 799; 89 J. P. 79; 41 T. L. R. 359; 27 Cox, C. C. 782; 18 Cr. App. Rep. 170, C. C. A.

1810c. —— ——.]—Breach of recognisance must be strictly proved.—R. v. Butler (1926), 19 Cr. App. Rep. 127, C. C. A.

Part VI.—Indictments.

1900a. Receiving property—Known to have been obtained by fraud or false pretences.]—To receive goods knowing that the vendor obtained them on credit under false pretences or by means of fraud other than false pretences is not an offence known to the law.—R. v. Schweller (1924), 18 Cr. App. Rep. 52, C. C. A.

1910a. Fresh indictment in respect of another offence—Founded on facts disclosed in depositions.]—Where a person has been committed for trial for one offence a fresh indictment cannot be preferred against him in respect of another offence, which comes within *Vexatious Indictments Act*, 1859 (c. 17), without the leave of the ct., even though such fresh indictment is founded on facts disclosed in the depositions.—R. v. Morgan, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.

1913a. Multiplication of indictments—Disapproved.]—(1) The ct. entirely approves of a ct. of trial dealing with all outstanding charges against a convicted prisoner, at his request, whenever it can legally do so.

(2) The ct. disapproves of the multiplication of indictments when the allegations can be conveniently made in one indictment.—R. v. Taylor (*alias* Saunders, *alias* Wallace) (1924), 18 Cr. App. Rep. 25, C. C. A.

Annotation:—Generally. **Refd.** R. v. Taylor (1926), 19 Cr. App. Rep. 146.

1913b. —— ——.]—R. v. Clarke, No. 2115a, *post*.

1913c. —— ——.]—R. v. Tyreman, No. 5359b, *post*.

1913d. —— ——.] Offences which may lawfully be charged in one indictment ought not to be distributed into more. R. v. Smith (1926), 19 Cr. App. Rep. 151, C. C. A.

1934. *Add. Annotation:*—**Folld.** R. v. Mosley, [1924] 2 K. B. 187.

1937a. —— ——.]—Counts for offences within Vexatious Indictments Act, 1859 (c. 17), may be added to the indictment without the leave of the ct. where they are founded on *facts disclosed on the depositions*.—R. v. Mosley, [1924] 2 K. B. 187; 93 L. J. K. B. 804; 130 L. T. 831; 88 J. P. 91, 68 Sol. Jo. 757; 27 Cox, C. C. 635; 18 Cr. App. Rep. 69, C. C. A.

Annotation: **Refd.** R. v. Morgan, [1925] 1 K. B. 752.

1978a. Larceny—Specific articles stolen must be set out.]—R. v. Douglas (1926), 19 Cr. App. Rep. 110, C. C. A.

2102a. —— Prejudice to one defendant.] Persons arrested together need not be tried together, &, if any one of them is likely to be embarrassed in his defence, ought not to be so tried.—R. v. Townsend, R. v. Hilden (1924), 18 Cr. App. Rep. 117, C. C. A.

2115a. —— ——.]—Indictments should not be multiplied, but where the law permits separate offences should be charged in separate counts of one indictment.—R. v. Clarke (1925), 18 Cr. App. Rep. 166, C. C. A.

2155a. —— ——.] R. v. Loberg, No. 3150d, *post*.

2195. *Add. Annotation:* **Refd.** R. v. Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2316. For "Criminal Law Amendment Act, 1835 (c. 35)," read "Criminal Law Amendment Act, 1885 (c. 69)."

PART VI. SECT. 2, SUB-SECT. 1.—A.

1814 iii. —— *Newly created offence.*]—A statute comes into force on the first moment of the day on which it receives the Royal assent, & if it be one creating a crime, an offence committed on that day, even although before the actual time at which the Royal assent was given, is within the Act.—R. v. Rocco, [1924] 1 D. L. R. 501; 41 Can. Crim. Cas. 101.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.

i 1. ——.]—Where the indictment was in the words of the enactment describing the offence:—*Held:* sufficient.—R. v. McLachlan (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

k 1. ——.]—R. v. Canadian Allis-Chalmers, Ltd. (1923), 54 O. L. R. 38.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 7.

se. *Indecent exposure*—"*With intent to offend.*"]—Where the facts alleged necessarily implied that the act charged was committed "wilfully": *Held:* notwithstanding the omission of that word, the information was sufficient.—R. v. Smothers (1924), 57 N. S. R. 179.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 8.—B. (a).

f 1. ——.]—Where ingredients of two distinct offences had been mixed together in a charge contrary to the settled principles of criminal procedure & in violation of Criminal Code, s. 710 (3):—*Held:* prisoner was entitled to his discharge.—R. v. Chue, [1924] 4 D. L. R. 300; 34 B. C. R. 177.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 9.—C.

r. Read now "**2102a i.**"
s. Read now "**2102a ii.**"
t. Read now "**2102a iii.**"
u. Read now "**2102a iv.**"

PART VI. SECT. 4, SUB-SECT. 13.

k 1. —— *Attempt to give jurisdiction.*]—A person committed on a charge which a district ct. Judge has no jurisdiction to try under any circumstances, cannot be tried by such Judge on a substituted charge, over which the Judge has jurisdiction, on the election of accused.—R. v. Chow, [1924] 4 D. L. R. 1072; 3 W. W. R. 534.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 14.

2241 i. *Application must be made to court of trial.*]—R. v. Hasey, [1923] 2 D. L. R. 33; 43 Can. Crim. Cas. 297; 56 O. L. R. 294.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.

p 1. —— *Effect of—Accused estopped from calling on prosecution to establish guilt.*]—R. v. Bonnelli (1925), 44 Can. Crim. Cas. 334.—**CAN.**

Part VII.—Trial of Indictments.

2365. *Add. Annotations:*— **Folld.** R. v. Dennis, R. v. Parker, [1924] 1 K. B. 867. **Refd.** R. v. Williams (1925), 19 Cr. App. Rep. 67.

2365a. —— ——.]—A criminal ct. has no jurisdiction to try two separate indictments against two defts. at one & the same time, even with the consent of counsel for the prosecution & counsel for defts.—R. v. DENNIS, R. v. PARKER, [1924] 1 K. B. 867; 93 L. J. K. B. 388; 130 L. T. 830; 88 J. P. 84; 40 T. L. R. 420; 68 Sol. Jo. 563; 27 Cox, C. C. 632; 18 Cr. App. Rep. 30, C. C. A.

2567. *Add. Annotation:* **Folld.** R. v. Hussey (1924), 18 Cr. App. Rep. 121.

2567a. ——.]—(1) Applt. was charged upon an indictment with breaking & entering a house with intent to commit a felony. At the trial applt. pleaded guilty to entering only, which plea was treated as a plea of guilty generally: *Held:* there was no plea of guilty & the case must go back, & prisoner asked to plead again to the indictment.

(2) Applt. at the trial asked that five charges of false pretences might be taken into consideration when awarding sentence, but the ct. refused as they were not offences of a similar nature to housebreaking:—*Held:* the ct. would not make an order that the ct. of quarter sessions should take into consideration the five cases of false pretences, but it might take them into consideration if certain conditions were fulfilled.—R. v. Lloyd (1923), 130 L. T. 319; 27 Cox, C. C. 576; 17 Cr. App. Rep. 181, C. C. A.

2582. *Add. Annotation:* **Refd.** R. v. Gordon (1925), 133 L. T. 731.

2710. *Add. Annotation:*— **Refd.** R. v. Birch (1924), 93 L. J. K. B. 385.

2730. *Add. Annotation:* - **Refd.** R. v. Birch (1924), 93 L. J. K. B. 385.

2730a. —— —— —— .]—Where, at the trial of an accused person for a criminal offence, a witness for the prosecution denies statements contained in the deposition sworn by the witness at the police ct., & leave has been obtained to treat the witnesses as hostile, counsel for the prosecution is entitled to cross-examine the witness on the statements contained in the depositions taken before the justices. But the depositions are not evidence at the trial, though they may be used to impeach the credit of the witness.—R. v. Birch (1924), 93 L. J. K. B. 385; 88 J. P. 59; 40 T. L. R. 365; 68 Sol. Jo. 540; 18 Cr. App. Rep. 26, C. C. A.

2839a. Reference to fact that photographs of accused shown to witnesses.]—(1) Counsel for the prosecution should not employ as part of his case the fact that certain witnesses have been shown a photograph of prisoner, even if the showing of the photograph was perfectly proper.

(2) Where a police witness has been asked by prisoner "where did I stay on the night of the alleged crime?" &, in his answer, has launched a series of fresh charges against the accused, relating to his stay at that place, but based on mere suspicion & not included in the indictment or referred to in the depositions, an irregularity has occurred which goes to the root of a conviction & necessitates that it should be quashed.

(3) Where a successful applt. has a previous unexpired sentence to serve, the ct. will generally order that the time that has elapsed between the notice & the determination of the appeal which has succeeded shall count towards the completion of the earlier sentence, even though there has been no application by applt. to that effect.—R. v. HASLAM (1925), 134 L. T. 158; 28 Cox, C. C. 105; 19 Cr. App. Rep. 59, C. C. A.

2839b. Second trial—Reference to quashed conviction.]—(1) On an allegation of breaking & entering the jury must be directed on the issue of breaking.

(2) When a trial has been set aside on a *venire de novo* the conviction quashed should not be mentioned to the jury at the second trial.—R. v. LLOYD (1924), 18 Cr. App. Rep. 12, C. C. A.

2879a. —— ——.]—On a plea of guilty (1) there must be legal proof of any previous convictions given in evidence, & (2) no deposition of a witness, absent through illness, should be put in if all the statutory requirements in such a case have not been fulfilled.—R. v. FINNEY (1924), 18 Cr. App. Rep. 41, C. C. A.

3007a. ——.]—(1) On a trial for larceny as a bailee there must be a direction on the point whether the conversion was fraudulent or not.

(2) An accused person must be asked whether he wishes to give evidence on oath or call witnesses.—R. v. MOORE (1924), 18 Cr. App. Rep. 29, C. C. A.

3010a. Should give evidence from witness box.]—A deft. is entitled under Criminal Evidence Act, 1898 (c. 36), to give his evidence from the witness box. The ct in ordering otherwise must exercise a judicial discretion.—R. v. SYMONDS (1924), 18 Cr. App. Rep. 100, C. C. A.

3011a. ——.]—A deft. witness may in a proper case be asked in cross-examination whether he imputes improper motives to the witnesses against him.—R. v. WILSON (1921), 18 Cr. App. Rep. 108, C. C. A.

PART VII. SECT. 7, SUB-SECT. 7.—E. (a).

§ 1. —— —— *Whether attendance procurable under subpœna.*]—O. was indicted for incest. S., a daughter of accused, who had made a deposition at petty sessions in which she swore that accused had committed the alleged offence, was called as a witness at the trial, & failed to appear, having gone into the Irish Free State. Her deposition was read to the jury, who having heard the accused's evidence, convicted him of the offence charged:—*Held:* the conviction should be quashed, as it had not been shown that the attendance of the witness, whose deposition had been put in evidence, could not have been procured by service on her of a writ of subpœna under the Irish Free State Act, 1924.—R. v. GILCHRIST, [1925] N. 27.—IR.

PART VII. SECT. 7, SUB-SECT. 8.—C.

§ 1. —— ——.]—Where a person is charged with stealing goods, & the fact that the goods were sold & delivered to him is proved in evidence, the case must not be allowed to go to the jury.—R. v. FISSEL (1924), 42 Can. Crim. Cas. 150.—CAN.

3051. *Add. Annotation:*—**Refd.** R. v. Dunkley (1926), 134 L. T. 632.

3122a. —— Does not include making disparaging suggestions.]—There ought not to be a suggestion from the judge that deft. on trial has previously appeared in a criminal ct. R. v. MILLER (1926), 19 Cr. App. Rep. 81, C. C. A.

3129a. ——.]—A direction must make it clear that the *onus* of proof is on the prosecution.—R. v. HAYTON (1925), 18 Cr. App. Rep. 169, C. C. A.

3133a. —— —— ——.]—While a judge is entitled to express his view of any evidence, he ought not to "invite" the jury to make a definite finding: any expression of his own views ought to be accompanied by a direction that the right of deciding on the facts is solely theirs.—R. v. MASON (1924), 18 Cr. App. Rep. 131, C. C. A.

3136a. Avoidance of unhappy expressions suggesting guilt of accused.]—(1) In a direction upon the evidence of children of tender years, there must be a clear warning about the nature of such evidence.

(2) It is wrong to invite a jury to consider whether deft. is "the sort of person" likely to commit the offence charged.—R. v. MARSHALL (1925), 18 Cr. App. Rep. 161, C. C. A.

3145a. —— .]—A judge in summing up is bound to put deft.'s case to the jury. A mere expression of the view of the judge is not sufficient to dispense with the duty of putting the case for the defence to the jury. R. v. MARRIOTT (1924), 18 Cr. App. Rep 71, C. C. A.

3146. *Add. Annotations:* **Folld.** R. v. Thorpe (1925), 133 L. T. 95. **Refd.** R. v. Canham (1925), 18 Cr. App. Rep. 163.

3146a. —— ——.]—Where a prisoner is charged with murder, & there is evidence on which a verdict of manslaughter could be found, it is the duty of the judge to leave to the jury the question whether the crime committed has or has not been reduced to manslaughter, even though that defence has not been raised & even though that defence is inconsistent with the defence actually raised; but a judge should not leave the question of manslaughter to the jury, where there is no evidence upon which such a verdict could be based.—R. v. THORPE (1925), 133 L. T. 95; 89 J. P. 143; 41 T. L. R. 468; 69 Sol. Jo. 625; 28 Cox, C. C. 4; 18 Cr. App. Rep. 180, C. C. A.

3151a. Must warn jury against accepting mere suggestion by prosecution in cross-examination—No evidence in support.]—The jury must be warned against the acceptance of a mere suggestion by the Crown in cross-examination unsupported by evidence on a material point. R. v. ALEXANDER (1924), 18 Cr. App. Rep. 130, C. C. A.

3156a. Indictment alleging several offences—Cases must be clearly distinguished.]—When an indictment alleges specific offences on distinct dates the jury should be warned to deal with each occasion separately, & not to permit inadequate evidence in the one to supplement inadequate evidence in the other. R. v. ROSS (1924), 18 Cr. App. Rep. 111, C. C. A.

3156b. —— ——.]—Where an indictment for indecent assault contains a number of counts, each count charging a separate assault on a different person, the jury should be directed not to return a general verdict but to return a verdict on each count, & they should also be warned to draw a careful distinction between the evidence on each count & the evidence on every other count & not to supplement the evidence on any particular count by looking at the evidence as a whole. R. v. BAILEY, [1924] 2 K. B. 300; 93 L. J. K. B. 980; 132 L. T. 318; 88 J. P. 72; 27 Cox, C. C. 602; 18 Cr. App. Rep. 12, C. C. A.

3156c. —— ——.]—If counts for fraudulent conversion & for obtaining by false pretences are left to the jury, they must be directed on each offence. R. v. MACLENNAN (1925), 19 Cr. App. Rep. 37, C. C. A.

3156d. Indictment containing count for conspiracy.]—(1) Where several prisoners are tried together upon an indictment containing counts for various offences against them individually & also a general count for conspiracy against them all, great care should be taken in directing the jury to keep the issues clear & to explain the relation of each count to the general count for conspiracy. In such a case it is a misdirection for the judge to tell the jury: "You must take the case as a whole & not in bits."

PART VII. SECT. 7, SUB-SECT. 10.—B.

f 1. —— .]—Where it was objected that the A.-G. exercised the right of reply, although deft. had called *no* witnesses: *Held:* the A.-G. was not bound to sum up for the Crown on the conclusion of the evidence of the prosecution, but had the right of reply.—R. v. McLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 11.

h 1. —— *To decide whether evidence admissible.*]—If evidence is tendered to prove the inadmissibility of evidence *prima facie* admissible, it is the duty of the judge to receive & to decide the question of admissibility before the evidence is given in the hearing of the jury.—R. v. TREANOR, R. v. FLOOD, R. v. TREANOR, R. v. KELLY, [1924] 2 I. R. 193.—**IR.**

h ii. —— *To decide whether witness by his admission is accomplice.*]—It is for the judge, & not for the jury, to decide on an admission by a witness whether he is or is not an accomplice. R. v. YOUNG, [1923], S. A. S. R. 35.—**AUS.**

3122 i. *Function of judge. Includes asking leading questions & summoning to counsel to waive their rights to address jury.*] R. v. WEST (1924), 41 Can. Crim. Cas. 109, 57 O. L. R. 416.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 12.—A.

g (p. 297) **i. —— *Where jury disagree.*]** A direction which amounted to no more than telling the jury that it was the duty of the minority not to allow any wilful or obstinate adherence to their own view to prevent the majority giving full consideration to the views of the majority.—*Held:* not a misdirection. R. v. GILBERT & M'PHERSON, [1923], V. L. R. 377; 47 A. L. T. 10; 31 Argus L. R. 224.—**AUS.**

g (p. 298) **i. —— *Indication between evidence of facts & expert opinions.***] Where there is not only no direct testimony of eye-witnesses that an alleged criminal act was committed but there is no direct testimony of an eye-witness called by the Crown that the act had not been committed, & the Crown relies on a chain of circumstantial evidence in which the opinions of non-expert witnesses are referred to as an important link, the charge to the jury should point out the importance of the distinction between evidence of scientific opinion & evidence of actual material facts & sufficiently remind the jury that such opinions were not testimony as to facts, & should specifically direct that the circumstances proved as actual objective facts must not only be consistent with the guilt of accused but must also be inconsistent with any reasonable hypothesis which would leave him innocent. R. v. HOWARD, [1923], 1 W. W. R. 997, 43 Can. Crim. Cas. 241.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 12.—B.

3152 i. *Need not go into every detail of evidence.*] R. v. HOOK (H.C.) (1923), 41 Can. Crim. Cas. 225.—**CAN.**

(2) Observations on the practice of charging a specific crime & adding a charge of conspiracy to commit that crime.—R. *v.* Lubero (1926), 135 L. T. 414; 90 J. P. 183; 19 Cr. App. Rep. 133, C. C. A.

3157. For "**second trial before same jury—Clear direction essential—Same defendant**" read "**Second trial—Before same jury—Clear direction essential—Same defendant.**"

3158. For "**——— Different defendants**" read "**——— Different defendants.**"

3158a. ——— **First trial set aside on venire de novo—Reference to first conviction.**]—R. *v.* LLOYD, No. 2839b, *ante*.

3165a. ———.]—(1) When prisoners are tried together, the direction to the jury must carefully discriminate between the respective cases.

(2) In Prevention of Crime Act, 1908 (c. 59), s. 10 (1), "seven days" means seven clear days.—R. *v.* DEAN (1921), 18 Cr. App. Rep. 21, C. C. A.

3165b. ——— **Counts for other offences included.**]—When two persons are jointly indicted for conspiracy, & also, in other counts, for other offences, it is wrong to lead the jury to believe that unless both are convicted, neither may be convicted on one of the other counts.—R. *v.* TAYLOR (1924), 18 Cr. App. Rep. 153, C. C. A.

3174a. ———.]—On a trial for murder the defence of manslaughter ought not to be withdrawn from the jury where there is evidence to support it.—R. *v.* BALL (1921), 18 Cr. App. Rep. 140, C. C. A.

3178. *Add. Annotation:* **Consd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3179. *Add. Annotation:* **Consd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3179a. ———.] R. *v.* THORPE, No. 3146a, *ante*.

3180. After this case add "*See, also*, Nos. 5933-5938, *post*."

3180a. Direction as to breaking & entering—Defence of bonâ fide claim of right.]—A defence of breaking & entering under a *bonâ fide* claim of right must be definitely put & explained to the jury, & the issue of felonious intent must be distinctly raised.—R. *v.* CURRISS (1925), 18 Cr. App. Rep. 174, C. C. A.

3185. *Add. Annotation:*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

3261. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

3318a. ——— ———.]—Where an indictment charges two persons with certain offences "with one another," if one is acquitted the other may sometimes but not always be convicted.—R. *v.* EDWARDS (1924), 18 Cr. App. Rep. 140, C. C. A.

3318b. ——— ———.]—Where in separate counts of an indictment a man & a woman are charged with incest, & there are separate trials of each count, the conviction of the man is good although the woman is acquitted.—R. *v.* GORDON (1925), 133 L. T. 734; 89 J. P. 156; 41 T. L. R. 611; 28 Cox, C. C. 41; 19 Cr. App. Rep. 20, C. C. A.

3323. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

3362a. Indictment for shooting with intent to murder—Verdict of assault.]—On an indictment for shooting with intent to murder or to cause grievous bodily harm, prisoner cannot be convicted of common assault.—R. *v.* STOKES (1925), 134 L. T. 479; 28 Cox, C. C. 140; 19 Cr. App. Rep. 71, C. C. A.

3366. *Add. Annotation:*—**Refd.** R. *v.* Stokes (1925), 134 L. T. 479.

3394. *Add. Annotation:*—**Refd.** R. *v.* Stokes (1925), 134 L. T. 479.

3407. For "**Second indictment to be tried—Right of prosecution to trial by another jury,**" read "**Second indictment to be tried—Whether trial by another jury.**"

3407a. ——— ———.]—It cannot be laid down as a general rule that a jury which has acquitted deft. on one indictment should not try him on another, but it must depend on the circumstances of each case; when it occurs they must be warned that the evidence in the two cases is not cumulative.—R. *v.* KLEIN (1926), 19 Cr. App. Rep. 161, C. C. A.

3424. *Add. Annotation:*—**Refd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3538. *Add. Annotation:*—**Consd.** R. *v.* Hertfordshire JJ., *Ex p.* Larsen (1925), 89 J. P. 205.

3180 i. *Direction as to intent to defraud—Charge of obtaining by false pretences.*]—A jury should, in cases under Crimes Act, 1915, s. 181 (a), be told that an intent to defraud is an essential element of the offence, unless in the exceptional cases where the intent is necessarily involved in the false statements made.—R. *v.* (?) LIVAN, [1925] V. L. R. 514; 31 A. L. T. 3; 31 Argus L. R. 263.—AUS.

PART VII. SECT. 7, SUB-SECT. 15.—A.

c i. ——— *Evidence ruled inadmissible after it has been given.*]—R. *v.* TRUNON, R. *v.* FLOOD, R. *v.* TRUNOR, R. *v.* KELLY, [1924] 2 I. R. 193.—IR.

PART VII. SECT. 7, SUB-SECT. 15.—B.

k i. ———.]—Where evidence given before a judge in a criminal trial was exhibited in a trial *de novo* before a succeeding judge:—*Held:* such procedure was irregular, & consent of accused did not cure the irregularity.—UMAR HAJEE *v.* R. (1923), I. L. R. 46 Mad. 117.—IND.

PART VII. SECT. 7, SUB-SECT. 16. D. (b).

n (p. 320). Read now "**3362a i.**"
o (p. 320). Read now "**3362a ii.**"

PART VII. SECT. 7, SUB-SECT. 16.—K.

g i. ——— *Meaning of "new trial."*]—Where by statute provision is made in the case of a jury disagreeing for a new trial, there is meant by the words "new jury" a jury entirely composed of new or fresh jurymen to the exclusion of all the jurymen who formed the first jury.—R. *v.* WONG O. SANG, [1924] 3 W. W. R. 45; 34 B. C. R. 8.—CAN.

PART VII. SECT. 7, SUB-SECT. 17.—F.

nl. *Omission of essential element of crime—Conviction invalid.*]—R. *v.* ING YUK ING (1924), 43 Can. Crim. Cas. 192.—CAN.

PART VII. SECT. 7, SUB-SECT. 17.—G.

3536 ii. ——— *In prisoner's absence.*]—*Held:* the ct. was not *functus officio*.—R. *v.* HUGHES (1924), 35 B. C. R. 53.—CAN.

3536 iii. ——— *After removal of conviction by certiorari.*]—R. *v.* KNAPP (1925), 44 Can. Crim. Cas. 338.—CAN.

PART VIII. SECT. 1, SUB-SECT. 1.

g i. ———.]—Where a person has been charged with two offences arising out of the same circumstances, & he pleads guilty to one of the charges, is convicted & fined, & then pleads guilty to the other charge, the previous conviction & penalty cannot be pleaded as a bar to punishment for the other offence.—R. *v.* GRIGER, [1923] 3 W. W. R. 763; 41 Can. Crim. Cas. 185; 17 Sask. L. R. 412.—CAN.

PART VIII. SECT. 1, SUB-SECT. 3.—A.

3567 iv. ——— ———.]—A. was prosecuted for selling liquor illegally & convicted. Based on the same facts a second prosecution was brought for keeping liquor for sale. A. pleaded

Part VIII.—Special Pleas.

3567. *Add. Annotation* :—**Refd.** Nadan v. R., [1926] A. C. 482.

Part X.—Informations.

3665. *Citations* :—For "17 W. R. 567" read "47 W. R. 567."

3718. *Add. Annotation* :—**Refd.** R. v. Evening News, *Ex p.* Hobbs, [1925] 2 K. B. 158.

Part XII.—Evidence and Proof.

3801a. —— ——.]—(1) It is permissible for a police officer who is in doubt upon the question who shall be arrested for a particular offence to show a photograph to persons in order to obtain information or a clue.

(2) It is, however, not permissible for a police officer to show beforehand to persons who are afterwards to be called as identifying witnesses photographs of those persons whom they are about to be asked to identify.

(3) Where photographs are used for the purpose of obtaining information a series of photographs, & not merely one or two, ought to be shown to the person who is expected to give the required information.—R. v. Dwyer, R. v. Ferguson, [1925] 2 K. B. 799; 95 L. J. K. B. 109; 132 L. T. 351; 89 J. P. 27; 41 T. L. R. 186; 27 Cox, C. C. 697; 18 Cr. App. Rep. 145, C. C. A.

Annotation :—**Refd.** R. v. Wainwright (1925), 19 Cr. App. Rep. 52.

3801b. —— —— **But may be shown before arrest.**]—A prosecutor identified a photograph as that of a prisoner whom the police subsequently arrested. After arrest prisoner was picked out by the prosecutor from a number of men in a room :—*Held* : there was no ground for complaint against the method of identification.—R. v. Melany (1924), 18 Cr. App. Rep. 2, C. C. A.

Annotation :—**Refd.** R. v. Dwyer, R. v. Ferguson, [1925] 2. K. B. 799.

3801c. —— —— ——.]—R. v. Dwyer, R. v. Ferguson, No. 3801a, *ante*.

3817a. —— ——.]—The prosecution is not entitled to put in police photographs for the purpose of identification as part of the evidence in chief. Where identification has been obtained by means of such photographs, the facts of such identification ought not to be given in evidence.—R. v. Wainwright (1925), 19 Cr. App. Rep. 52, C. C. A.

3820a. —— **Reference to meritorious discharge from army.**]—A mere reference to a meritorious discharge from the army by an undefended prisoner in a statement handed to the ct. of trial does not necessarily expose him to cross-examination on his character generally, though it may do so on his career in the army. Such a statement should be looked through in his interest & nothing read to the jury of the legal consequences of which he is not aware.—R. v. Parker (1924), 18 Cr. App. Rep. 14, C. C. A.

3820b. —— **Evidence suggesting normal respectability.**]—(1) Questions inviting a witness to make suggestions should not be put in cross-examination, especially when they may have the effect of inducing a prisoner to make an attack on the prosecution, which will let in evidence otherwise inadmissible.

(2) A defending counsel should refrain from putting questions to prisoner giving evidence which suggest normal respectability, but which fall just short of giving evidence of good character. R. v. Baldwin (1925), 133 L. T. 191; 89 J. P. 110; 69 Sol. Jo. 420; 28 Cox, C. C. 17; 18 Cr. App. Rep. 175, C. C. A.

3835. *Add. Annotation* : **Refd.** R. v. Dunkley (1926), 134 L. T. 632.

3850a. —— **Cross-examination of witness for defence constituting attack on character of accused.**]—Questions must not be put in cross-examination to a witness called for the defence in such a way as to have the effect of constituting an attack on the character of the accused, when that is not in issue, even though the object of such questions may be to attack the credit of the witness & not the character of the accused.—R. v. McCrain (1925), 134 L. T. 160; 90 J. P. 64; 42 T. L. R. 215; 28 Cox, C. C. 100; 19 Cr. App. Rep. 68, C. C. A.

autrefois convict :—*Held* : a good plea.—Quebec Liquor Commission v. Demon, [1924] 2 D. L. R. 861; 42 Can. Crim. Cas. 65.—CAN.

PART VIII. SECT. 1, SUB-SECT. 3.—D.

b 1. —— *Previous acquittal for assaulting constable while discharging another duty.*)—A mere variation in the nature of the duty, which the officer is alleged to have been engaged in, cannot be considered as a variation in the nature of the offence charged against accused.—R. v. Diamond, [1924] 3 D. L. R. 359; 2 W. W. R. 621; 20 Alta. L. R. 419.—CAN.

PART XII. SECT. 1.

3791 l. *Circumstantial evidence—Exclusion of other causes.*)—It is not admissible to convict a person on circumstantial evidence if such evidence can be interpreted to give any other explanation than the accused person's guilt.—R. v. Tymko (1924), 42 Can. Crim. Cas. 147.—CAN.

PART XII. SECT. 2.

p 1. —— *Reference by magistrate to exhibits.*)—A magistrate at a trial was called to prove the identifications of accused in gaol & the methods adopted. Instead of stating the details & results, witness referred to documents, described as exhibits, in which he stated his evidence was to be found. The documents were put on the record as his evidence :—*Held* : the attempt to record evidence in this manner was not only contrary to law, but violated the first principles of evidence, & must be entirely ignored.—Lal Singh v. R. (1924), I. L. R. 5 Lah. 396.—IND.

3924. *Add. Annotation :* **Refd.** Godman v. Times Publishing Co., [1926] 2 K. B. 273.

3972. *Add. Annotation :* **Refd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

3992. *Add. Annotation :* **Refd.** Godman v. Times Publishing Co., [1926] 2 K. B. 273.

4009. *Add. Annotation :* **Apld.** R. v. Hewitt (1925), 89 J. P. Jo. 721.

4009a. [- - - - - -.] In a charge of unlawful carnal knowledge of a girl under sixteen years of age, evidence independent of the girl's evidence may be given that the accused on a previous occasion indecently assaulted the same girl, & the fact that a considerable time has elapsed since the earlier act of indecency affects only the weight & not the admissibility of the evidence.—R. v. HEWITT (1925), 134 L. T. 157; 90 J. P. 68; 42 T. L. R. 216; 28 Cox, C. C. 101; 19 Cr. App. Rep. 61, C. C. A.

4129a. Statement by wife In absence of husband.] A statement by deft.'s wife to third persons is not evidence against deft. on his trial of the facts therein contained, but may be given in evidence with his remarks on them when it is repeated to him.—R. v. FINDEN (1926), 19 Cr. App. Rep. 144, C. C. A.

4189. *Add. Citation :*—27 Cox, C. C. 510.

4286. *Add. Annotation :*—**Mentd.** R. v. Smith, [1924] 2 K. B. 194.

4308. *Add. Annotation :*—**Refd.** Nadan v. R., [1926] A. C. 482.

4351a. ——— ——— ———.]—R. v. BOOKER, No. 8793a, *post.*

4600. *Add. Annotations :*—**Mentd.** Britannia Hygienic Laundry Co. v. Thornycroft (1925), 94 L. J. K. B. 858; The Paludina, [1925] P. 40.

4620. *Add. Annotation :*—**Refd.** Shapiro v. La Morta (1923), 130 L. T. 622.

4645. *Add. Annotation :* **Refd.** Lake v. Simmons (1926), 95 L. J. K. B. 586.

PART XII. SECT. 4, SUB-SECT. 2. - B. (a).

3920 iii. [On a charge of theft evidence tending to show that accused has been guilty of criminal acts, other than that upon which he has been charged, is inadmissible, & when allowed entitles accused to a new trial.—R. v. MORRISON (1923), 33 B. C. R. 211. **CAN.**

3923 ii. .] Evidence of other similar acts done by accused is not admissible merely for the purpose of proving that accused by reason of his character or habits is likely to have committed the offence with which he is charged, but it is admissible if it is relevant in any other manner whatever to the guilt of accused, & it is not necessary before evidence of other similar *but unconnected* acts can be admitted that the prosecution should first lay a foundation for such evidence by establishing a *prima facie* case against accused, sufficient without the help of any such evidence to go to the jury.—R. v. Cooper, [1923] N. Z. L. R. 1237; 25 L. R. 825. **N.Z.**

PART XII. SECT. 4, SUB-SECT. 6. - B.

4200 viii. [On a charge of incest there was evidence of prosecutrix having complained to her stepmother six days after the alleged crime was committed, & further evidence of prosecutrix & her sister was allowed in that two days later she had complained to her sister of the crime.—*Held* : evidence of the statements made by prosecutrix to her sister eight days after the occurrence when she had had ample opportunity to complain before, was inadmissible, & by its admission a substantial wrong was done to accused, & there should be a new trial.—R. v. PROULX (1923), 33 B. C. R. 30.— **CAN.**

PART XII. SECT. 4, SUB-SECT. 7.

4221 iii. [— — .] It was objected that the trial judge improperly received in evidence a book found in prisoner's house, entitled "Theses & Statutes of the Third (Communistic) International of Moscow," published in the interests of an organisation with which prisoner had voted to amalgamate:—*Held* : the evidence was admissible.—R. v. MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.— **CAN.**

4232 i. *Must be material Charge of acts of gross indecency - Presence of possession of lewd pictures admitted on general issue.*] - Upon a charge of gross indecency, evidence that indecent photographs were found in accused's possession is not admissible, unless there is some specific connection between the articles & the participation of accused in the crime.—R. v. DAVIS, [1925] App. D. 30.— **S. AF.**

PART XII. SECT. 5, SUB-SECT. 1.

ii. *Actual words & not substance of confession should be given.*]- The ct. ought to ascertain as far as possible the very words spoken by accused who is said to have confessed. There is no rule of law which precludes the ct. from holding that a confession has been proved even in cases where the evidence gives the substance, though not the actual words of the statement made by accused, if the ct. believes that evidence.—NUR ALI v. R. (1921), I. L. R. 5 Lah. 140.— **IND.**

ao. *Statement inculpating co-prisoners.*] - Three applts. together with a woman were convicted of the crime of murder. After arrest the woman had made a statement inculpating applts. under whose compulsion she said she had been acting:—*Held* : the statement was not a confession, & had been improperly admitted in evidence against applts.—R. v. CAMANS, [1925] App. D. 570.— **S. AF.**

ai. *Statement overheard in cells.*] At the trial of four persons, on charges including a charge of murder against three of the number, a police-officer, who had been on duty on the morning after the murder at the office in which two of the persons charged were being detained, gave evidence. He deposed that prisoners were shouting to each other in the cells to see who was in. He was then asked by counsel for the Crown, "What did you hear?":—*Held* : the question must be disallowed.—H.M. ADVOCATE v. KEEN, [1926] S. C. (J.) 1. **SCOT.**

PART XII. SECT. 5, SUB-SECT. 2.

ci. [— — — — —.]—Where a magistrate translated what he had written down to accused, who acknowledged it to be correct & affixed his thumb impression:—*Held* : the confession was admissible, any defects in the mode of recording it being cured by Code of Criminal Procedure, s. 533.—R. v. DEO DAT (1922), I. L. R. 45 All. 166.— **IND.**

PART XII. SECT. 5, SUB-SECT. 3.

ri. ——— *Subsequent charge of perjury.*]—At the preliminary hearing of another charge, accused, who was in custody, was questioned by the magistrate, when asking for an adjournment. He was not represented by counsel, & had not offered himself as a witness or been sworn, & his answers were not taken down in writing. At the trial accused was questioned as to alleged admissions to the magistrate & he denied them. His denial was the subject of the perjury charge:—*Held* : the conviction for perjury should be quashed.—R. v. CIESLENSKI, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.— **CAN.**

PART XII. SECT. 5, SUB-SECT. 4.

s (p. 412) **i.** - ——— ———.]—If based on an admission or confession to the police, when they were interrogating accused, a conviction on a summary trial will be set aside, unless it can be proved that accused made the admission or confession voluntarily.— R. v. WARD (1921), 41 Can. Crim. Cas. 118.— **CAN.**

4311 vi. ———.]—A confession made to any person under the influence of a promise or threat held out by a person in authority, calculated to induce the confession, is inadmissible, unless it be clearly proved to the satisfaction of the judge, whose duty it is to decide the question, that the promise or threat did not operate upon the mind of the accused, & that the confession was voluntary.—R. v. TREANOR, R. v. FLOOD, R. v. TREANOR, R. v. KELLY, [1924] 2 I. R. 193.— **IR.**

PART XII. SECT. 5, SUB-SECT. 6.— C. (b).

q i. — .] A collecting & an assistant "panchayet" are persons in authority within Evidence Act, s. 24, when they have taken an important part in the inquiry into the circumstances of the commission of the offence.—R. v. GANESH CHANDRA GOLDAR (1922), I. L. R. 50 Calc. 127.— **IND.**

PART XII. SECT. 6, SUB-SECT. 1.

4540 iii. ——.]— In a criminal prosecution the charge against accused must be proved absolutely. If there is a reasonable doubt the conviction must be quashed.—R. v. DERBY (1924), 42 Can. Crim. Cas. 152.—**CAN.**

PART XII. SECT. 6, SUB-SECT. 3.—B.

4610 i. *Sufficiency of proof—Question of fact for jury.*]—The question of intent is for the jury & not for the Crown.—R. v. MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.— **CAN.**

4620 i. *Whether special intent must be proved—In malicious damage to property.*]—R. v. MARIARION, (1924) App. D. 11.—**S. AF.**

4659. *Add. Citation :*—1 Leach, 300, n.

Add. Annotation : —**Refd.** R. v. Elworthy (1867), 37 L. J. M. C. 3.

4692. In the cross-reference following this case, for "*See* Part XXIII., Sect. 1, sub-sect. 1, Q. (*b*), *post*," read "*See* Part XXXIII., Sect. 1, sub-sect. 1, Q. (*b*), *post*."

4705a. Duty of counsel To apply for leave to cross-examine as to character.] When counsel for the prosecution proposes to cross-examine prisoner on character, under Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*), it is desirable that he should make an express application for leave to the judge before proceeding to that line of cross-examination. R. v. McLEAN (1926), 134 L. T. 640, C. C. A.

4705b. To refrain from cross-examining as to character.] R. v. DUNKLEY, No. 4731a, *post*.

4711a. ——— ———.]—R. v. BALDWIN, No. 3820b, *ante*.

4712. *Add. Annotation :* **Consd.** R. v. Baldwin (1925), 133 L. T. 191.

4715. *Add. Annotations :* **Refd.** R. v. Dunkley (1926), 134 L. T. 632; R. v. McLean (1926), 134 L. T. 640.

4733. *Add. Annotation :* **Refd.** R. v. Dunkley (1926), 134 L. T. 632.

4734a. Suggestion that witness deliberately committing perjury.] (1) To suggest that a witness for the prosecution is deliberately committing perjury because he believes that he has a grievance against prisoner is an imputation on the character of that witness within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*), so as to render cross examination of prisoner as to character admissible.

(2) Even where such a line of cross-examination is admissible in law, counsel for the prosecution should refrain from adopting it, unless the circumstances are such as to make it appear to be a positive duty on his part so to cross-examine. R. v. DUNKLEY (1926), 134 L. T. 632; 90 J. P. 75; 28 Cox, C. C. 113; 19 Cr. App. Rep. 78, C. C. A.

4735. *Add. Annotations :* **Refd.** R. v. Dunkley (1926), 134 L. T. 632; R. v. McLean (1926), 134 L. T. 640.

4742. *Add. Annotation :* **Refd.** R. v. Dunkley (1926), 134 L. T. 632.

4747. *Add. Annotation :* **Refd.** R. v. Dunkley (1926), 134 L. T. 632.

4748. *Add. Annotations :* **Refd.** R. v. Dunkley (1926), 134 L. T. 632; R. v. McLean (1926), 134 L. T. 640.

4749. *Add. Annotation :* **Refd.** R. v. Dunkley (1926), 134 L. T. 632.

4750. *Add. Annotation :* **Refd.** R. v. Dunkley (1926), 134 L. T. 632.

4764a. ——— ——— **Grievous bodily harm.**]—Upon an indictment for inflicting grievous bodily harm, the wife of prisoner must not be called as a witness for the Crown. —R. v. KING (1925), 19 Cr. App. Rep. 34, C. C. A.

4818. *Add. Annotation :* **Consd.** R. v. Bailey, [1924] 2 K. B. 300.

4826a. ——— ——— ———.] —Appet. was convicted of unlawful carnal knowledge of a girl under thirteen, & was sentenced to three years' penal servitude. The girl, whose age was eight & a half years, gave unsworn testimony under the above sect., proviso (a) of which renders necessary corroboration of such evidence "by some other material evidence in support thereof implicating the accused." The only corroboration of the child's testimony was the evidence of an older girl to whom she stated her version of what had occurred immediately after the alleged offence had taken place: *Held:* corroboration must not only connect, or tend to connect, the accused with the crime, but must come from an independent quarter, & the evidence of the older girl originated from prosecutrix herself. —R. v. EVANS (1924), 88 J. P. 106; 18 Cr. App. Rep. 123, C. C. A.

4878a. ——— ——— .] —R. v. SMITH, No. 6008a, *post*.

4891. *Add. Annotation :* **Refd.** R. v. Beebe (1925), 133 L. T. 736.

4900. *Add. Annotation :* **Consd.** R. v. Beebe (1925), 133 L. T. 736.

4902. *Add. Annotations :* **Consd.** R. v. Beebe

PART XII. SECT. 12, SUB-SECT. 2.—A.

b 1. *Can be compelled to furnish specimen of handwriting.*]—A witness, in a criminal trial, though he be accused testifying on his own behalf, while under cross-examination may be ordered to write certain words dictated to him, & when accused is the witness an effect of such writing may be that a letter, otherwise unproved, is admitted in evidence against him. R. v. WHITAKER, [1924] 3 D. L. R. 63; 2 W. W. R. 706; 42 Can. Crim. Cas. 162. —**CAN.**

PART XII. SECT. 12, SUB-SECT. 3.—B.

a 1. *Children Act*, 1908 (c. 67)—*Whether compellable—Offence involving bodily injury.*]—A man was tried upon a charge of using certain lewd, indecent & libidinous practices towards a girl aged six:—*Held:* an offence involving bodily injury to the child within the above Act, although no actual physical hurt had been done to her, & the wife of accused could under that Act & Criminal Evidence Act, 1898, be called & examined by the Crown as a witness. —H.M. ADVOCATE v. LEE, [1923] S. C. (J.) 1.—**SCOT.**

PART XII. SECT. 12, SUB-SECT. 4. B.

a 1. *Criminal Code*, s. 1003. R. v. GILMORE (1924), 43 Can. Crim. Cas. 300. **CAN.**

PART XII. SECT. 13, SUB-SECT. 1.

p 1. ———.] —The question whether a witness is an accomplice is one of *fact for the jury, after the judge has* instructed them as to what constitutes an accomplice & has decided that there is evidence from which the jury can reasonably infer that the witness comes within that category. R. v. GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357. —**CAN.**

c 1. *Person giving bribe.*]—A. & B. were charged with conspiring to obtain money from C. by unlawful means. The Crown case was that prisoners had conspired to obtain, & had obtained, a large sum of money from C. as a bribe to refrain from taking criminal proceedings against C. or his daughter, both of whom gave evidence for the Crown. Accused denied having asked for or received any money: *Held:* C. was not an accomplice. R. v. CRAIGEN & MCPHERSON, [1925] V. L. R. 377; 47 A. L. T. 19; 31 Argus L. R. 225. **AUS.**

PART XII. SECT. 13, SUB-SECT. 4. B.

4891 in a. ——— R. v. DAVIDSON (1924), 44 Can. Crim. Cas. 311. **CAN.**

PART XII. SECT. 13, SUB-SECT. 4. C.

g 1. ———.] General hostility to the victim cannot be considered to be corroboration of a direct statement connecting accused with a particular crime. Corroboration must point to the identification of the person charged with the particular act with which the direct evidence connects him. R. v. KAMA (1926), 1 L. R. 47 All. 466. **IND.**

PART XII. SECT. 13, SUB-SECT. 4. E.

g 1. ——— Where the judge called the attention of the jury to the rule as to the danger of convicting on the uncorroborated testimony of an accomplice, at the same time pointing out that it was within their province to do so: *Held:* the conviction should be affirmed. R. v. SHARP, (1923) 2 D. L. R. 1004, 44 Can. Crim. Cas. 10; 54 N. S. R. 116. **CAN.**

(1925), 133 L. T. 736. **Mentd.** R. *v.* Brixton Prison, *Ex p.* Perry, [1924] 1 K. B. 455.

4934. *Add. Annotations :*—**Apld.** R. *v.* Evans (1924), 88 J. P. 196 ; R. *v.* Beebe (1925), 133 L. T. 736. **Refd.** R. *v.* Ross (1924), 18 Cr. App. Rep. 141.

4971a. ——.]—R. *v.* SMITH, No. 6066a, *post.*

Part XIII.—Punishment and Prevention of Crime.

4974a. ——.]—R. *v.* JONES, R. *v.* POOLE, R. *v.* TERRY (1924), 18 Cr. App. Rep. 135, C. C. A.

4974b. ——.]—R. *v.* WRIGHT (1925), 19 Cr. App. Rep. 19, C. C. A.

4994a. —— —— ——.]—The mere fact that a man has been convicted many times is not in itself sufficient reason for passing a heavy sentence on him for an offence which is trivial in itself.—R. *v.* TAYLOR (1924), 18 Cr. App. Rep. 143, C. C. A.

4994b. —— —— ——.]—The fact that a prisoner has committed some serious offences is no reason for giving him a sentence of penal servitude for such an offence as breaking into a railway station booking-office & stealing some cigarettes & bottles of horse medicine. R. *v.* PRICE (1924), 18 Cr. App. Rep. 138, C. C. A.

4994c. —— —— ——.]—Prisoner obtained various small sums of money from a tobacconist by falsely representing that he had obtained certain appointments, & was sentenced to three years' penal servitude. He had a bad record both in South Africa & in England :- *Held :* in considering whether the sentence was proper the ct. had to beware of treating an offence as serious in itself because it had been committed by a man who previously had committed a series of offences, & the sentence should be reduced to eighteen months' imprisonment with hard labour.—R. *v.* DURAND (1924), 18 Cr. App. Rep. 137, C. C. A.

4994d. ——.]—R. *v.* WALLS (*alias* RUSSELL) (1925), 19 Cr. App. Rep. 35, C. C. A.

4994e. ——.]—R. *v.* DENT (1925), 19 Cr. App. Rep. 18, C. C. A.

4994f. ——.] R. *v.* GEMMS (1926), 19 Cr. App. Rep. 74, C. C. A.

4994g. ——.] In imposing sentence on persons often previously convicted, regard must be had to the gravity of the offence in question.—R. *v.* D'ARCY (1926), 19 Cr. App. Rep. 22, C. C. A.

5036a. *S.P.* R. *v.* MOLDON (1926), 19 Cr. App. Rep. 110, C. C. A.

5039a. —— ——.]—Previous convictions of a prisoner on trial must be strictly proved.—R. *v.* TURNER (1924), 18 Cr. App. Rep. 161, C. C. A

5046a. ——.] R. *v.* DRIVER (1926), 19 Cr. App. Rep. 86, C. C. A.

5049a. —— ——.]—Where prisoner, a young man, had made a real effort to retrieve his character & to get continuous work :—*Held :* (1) a sentence to penal servitude was not necessary, & prisoner's sentence of five years' penal servitude might suitably be reduced to twenty-one months' imprisonment with hard labour.

(2) The term of first sentence to penal servitude must depend on the circumstances : there is no general rule that it is three years.—R. *v.* TOWNSEND (1924), 18 Cr. App. Rep. 99, C. C. A.

5049b. —— ——.]—R. *v.* BOURNE, R. *v.* COLEMAN (1925), 19 Cr. App. Rep. 17, C. C. A.

5057a. —— ——.]—Sentence mitigated in view of a long period of honest work.—R. *v.* WINTER (1924), 18 Cr. App. Rep. 139, C. C. A.

5057b. —— ——.]—Sentence reduced in view of a long period of honest work.— R. *v.* PORTER (1926), 19 Cr. App. Rep. 90, C. C. A.

5057c. —— ——.]—Sentence mitigated in view of an interval of three years' honest life.—R. *v.* GUNTRIP (1925), 19 Cr. App. Rep. 45, C. C. A.

5057d. —— ——.]—R. *v.* WHITBY (1926), 19 Cr. App. Rep. 115, C. C. A.

5065. *Add. Citations :*—130 L. T. 319 ; 27 Cox, C. C. 576.

5074a. —— ——.]—R. *v.* LLOYD, No. 2567a, *ante.*

5081a. —— ——.]—R. *v.* TAYLOR (*alias* SAUNDERS, *alias* WALLACE), No. 1913a, *ante.*

5092a. —— **Duty of police to supply list of charges.**]—Appct. had been convicted at quarter sessions of larceny & had been sentenced to five years' penal servitude. Offences which he admitted & which were other than those charged against him in the indictment were taken into consideration by the ct. of quarter sessions in passing sentence. He applied for leave to appeal against his sentence :—*Held :* as it was difficult to see what other cases had been taken into consideration by the ct. of quarter sessions in passing sentence on appct., it would be convenient if in such a case the police would file at the ct. of trial a list showing (*a*) the places where the other offences had been committed ; (*b*) the dates & (*c*) the nature of such offences ; (*d*) if possible, whether or not warrants had been issued in respect of such offences.—R. *v.* HICKS (1924), 88 J. P. 68 ; 18 Cr. App. Rep. 11, C. C. A.

5092b. Other court should be informed before sentence passed.]—R. *v.* TAYLOR, No. 5314a, *post.*

5097a. —— ——.]—R. *v.* PEACE (1925), 19 Cr. App. Rep. 58, C. C. A.

5099. *Add. Annotation :*— **Refd.** R. *v.* Peace (1925), 19 Cr. App. Rep. 58.

5125a. ——.]—R. *v.* Cox (1924), 18 Cr. App. Rep. 152, C. C. A.

5125b. ——.]—R. *v.* HURRELL (1926), 19 Cr. App. Rep. 80, C. C. A.

5125c. ——.]—R. *v.* WARD (1926), 19 Cr. App. Rep. 126, C. C. A.

5125d. ——.]—Sentence reduced, although the case was serious, in view of the fact that it was prisoner's first offence, & on account

of her youth.—R. v. Chick (1925), 19 Cr. App. Rep. 57, C. C. A.

5148a. ——.]—Sentence mitigated in view of youth.—R. v. Hardy (*alias* Emmett) (1925) 18 Cr. App. Rep. 168, C. C. A.

5148b. ——.]—R. v. Chick, No. 5125d, *ante*.

5148c. ——.]—Sentence mitigated in view of youth, notwithstanding prisoner had been detained in a Borstal institution & had also served a sentence of three months' imprisonment with hard labour.—R. v. Leatherland (26), 19 Cr. App. Rep. 85, C. C. A.

5148d. ——.]—R. v. Gething (1926), 19 Cr. App. R . 112, C. C. A.

5155a. ——.]—R. v. Hurrell (1926), 19 Cr. App. Rep. 89, C. C. A.

5173. *Add. Annotation:* **Reld.** R. v. Roberts & Morriss (1926), 134 L. T. 635.

5174. *Add. Annotation:* **Reld.** R. v. & Morriss (1926), 134 L. T. 635.

5175. *Add. Annotation:* **Reld.** R. v. Roberts & Morriss (1926), 134 L. T. 635.

5175a. ——.]—There is no rule of law or of practice forbidding a sentence of imprisonment being given to follow a of two years' imprisonment with hard labour. —R. v. Roberts & Morriss (1926), 134 L. T. 635; 42 T. L. R. 373; 28 Cox, C. C. 150; *sub nom.* R. v. Morriss, 90 J. P. 84; 42 T. L. R. 373; 70 Sol. Jo. 426; 19 Cr. App. Rep. 75, C. C. A.

5181. For "in the case of consecutive sentences" read "in the case of concurrent sentences."

5184. *Add. Annotation:*—**Reld.** R. v. Fielder (1926), 135 L. T. 64.

5194a. —— Not interrupted by period of special treatment pending appeal against another conviction.]—In a proper case the ct. will order that the period of "special treatment" under Appeal Act, 1907 (c. 23), s. 14, of an applt. already serving a sentence shall not be added to that term.—R. v. Fox (1925), 18 Cr. App. Rep. 192, C. C. A.

5194b. —— ——.]—R. v. Haslam, No. 2839a, *ante*.

5217. *Add. Annotation:* **Reld.** R. v. Townsend (1924), 18 Cr. App. Rep. 99.

5217a. —— ——.]—R. v. Townsend, No. 5049a, *ante*.

5246a. —— —— ——.]—As a general rule, the term of detention in a Borstal institution should be three years.—R. v. Revill (1925), 19 Cr. App. Rep. 44, C. C. A.

5255. *Add. Annotation:*—**Apld.** R. v. Baxter (1924), 18 Cr. App. Rep. 127.

5258. *Add. Annotation:*—**Folld.** R. v. Dean 18 Cr. App. Rep. 21.

5261a. —— —— ——.]—R. v. Dean, No. 3165a,

5282. *Add. Annotation:*—**Consd.** R. v. Norman, [1924] 2 K. B. 315.

5283a. —— —— **Nothing must be stated to jury about charge until substantive offence dealt with.**]—R. v. Tyreman, No. 5350b, *post*.

. Admission of being habitual criminal—Duty of court to explain charge.]—Before an admission of being a habitual criminal is accepted, it should be made clear to prisoner that the allegation is that he was a habitual criminal at the time of his arrest.—R. v. Donovan (1925), 19 Cr. App. Rep. 2, C. C. A.

5290b. Direction to jury Necessary contents.] R. v. C. C. A.

5299. *Add. Annotation:* **Reld.** R. v. Stokell (1924), 18 Cr. App. Rep. 155.

5300. *Add. Annotation:* **Consd.** R. v. Stokell (1924), 18 Cr. App. Rep. 155.

5303a. ——.]—During the trial of accused as a habitual criminal the judge asked a police witness whether he knew anything of beyond his participation in the which accused had co was: "I know he has been asso with convicted persons." Association with convicted persons was not one of the grounds set out in the statutory notice to accused: *Held:* evidence of facts not included in the statutory notice to accused must not be given at the trial by the prosecution or by any of its witnesses, & the conviction as a habitual criminal must be quashed.—R. v. Baxter (1924), 132 L. T. 256; 27 Cox, C. C. 680; 18 Cr. 127, C. C. A.

5303b. —.] No misconduct, whether c or not, may be given in evidence on the trial of an allegation of being a habitual criminal served.—R. v. Stokell (1924), 18 Cr. App. Rep. 155, C. C. A.

5303c. —.]—R. v. Tyreman, No. 5350b, *post*.

5304a. Must go to question whether prisoner habitual criminal when charged.] R. v. Winn, No. 5355a,]

5312a.

shopbreaking. A was sentenced to three years' penal servitude. He wa found to be a habitual criminal on the gr that he had been convicted on three & that he was

Held
R. v.
, 35 B. C. R. 55.—CAN.

punishment under C

pl.—R. v. [1924] 2 W. W. R. 342; 42 Crim. Cas. 153.—CAN.

sixteen.)—Mackay v. [1923] S. C. (J.) 16.—SCOT.

PART XIII. SECT. 2, SUB-SECT. 1.—A.

5036 i. *Previous acquittals must not be adversely.*]—R. v. Johnson 15), 44 Can. Crim. Cas. 319.—CAN.

PART XIII. SECT. 2, SUB-SECT. 5.—C.

5142 ii. ——.)—Sentenc in view of youth.—R. v. Glavken (1924), 57 N. S. R. CAN.

5142 iii. *S.P.*—R. v. Hamilton), 58 N. S. R. 46.—CAN.

PART XIII. SECT. 3, SUB-SECT. 4.

f i. —— —— ——.]—On a conviction on a charge of robbery with violence the judge ordered prisoner to be whipped, &, not having stated the number of times he was to be whipped, provided for this in the record of con-

PART XIII. SECT. 3, SUB-SECT. 5.

q i. —— —— ——.]—Where an offence is punishable by imprisonment for more than five years, a sentence of a fine & imprisonment in default of payment

Can. 11; 19 k. L. 105; [1925] 1 W. W. R. 23 CAN.
c r violation o
Code he may not order in
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k. L. R. 165; [1925] 1 W. W. R. 137.—CAN.

PART XIII. SECT. 3, SUB-SECT. 8.

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R. v. Hinson, [1924] 2 W. W. R. 342; 42 Can. Crim. Cas. 153.—CAN.

a dishonest or criminal life, & he was sentenced to five years' preventive detention. In Sept. 1923 applt. was sentenced to twelve months' imprisonment as a suspected person, & he was released on July 23, 1924. From Sept. to Dec. 1924 he was in honest employment. He committed the shop-breaking for which he had now been sentenced on Jan. 2, 1925: *Held*: it was questionable whether, on these facts, the jury could properly have found applt. to be a habitual criminal, but if they had done so it must be on a direction to them that the burden of proof always rested on the prosecution to show that during the relevant period applt. had been leading, persistently, a dishonest or criminal life; as there were passages in the summing up which might have conveyed to the jury that, when the prosecution had gone a certain length, the burden rested on applt. to show that he had turned over a new leaf, the conviction must be quashed.—R. v. DRISCOLL (1925), 89 J. P. 104; 41 T. L. R. 425; 18 Cr. App. Rep. 184, C. C. A.

5314a. – .] (1) On the trial of an allegation that prisoner is a habitual criminal the direction that if the three statutory convictions are proved, he must be so found, is incorrect: his whole career must be considered by the jury.

(2) When a ct. in passing a sentence takes into account charges pending in another ct., the latter ought to be informed thereof, before passing sentence upon such other charges. R. v. TAYLOR (1926), 19 Cr. App. Rep. 146, C. C. A.

5352a. .] The mere fact that accused has done honest work in his latest interval of liberty is not a defence to the allegation that he is a habitual criminal. R. v. HAYES (1926), 90 J. P. 190; 19 Cr. App. Rep. 157, C. C

5355a. – – **Duty of** |—(1) The direction on the allegation of being a habitual criminal must explain the merits of an interval of honest work in each case.

(2) The essential question is whether prisoner is a habitual criminal at the time when he is so charged.—R. v. WINN (1925), 69 Sol. Jo. 574; 19 Cr. App. Rep. 1, C. C. A.

5357. *Add. Annotation:* **Consd.** R. v. Norman, [1924] 2 K. B. 315.

5358. *Add. Annotation:* **Consd.** R. v. Norman, [1924] 2 K. B. 315.

5359a. For the existing paragraph in original volume substitute the following paragraph:—

— – — — .]—Where a person who has been found to be a habitual criminal & has been sentenced to preventive detention subsequently commits another crime & a notice is served upon him under the above :, the jury are not bound to find ' to be at the time when the verdict is given a habitual criminal. In every case it is a question of fact for the jury to say whether or not prisoner is still a habitual criminal, & prisoner is entitled, notwithstanding that he has previously been found to be a habitual criminal & sentenced to ntive detention, to call evidence to that he is not at the material time a habitual criminal.—R. v. NORMAN, [1924] 2 K. B. 315; 93 L. J. K. B. 883; 131 L. T. 29; 88 J. P. 125; 40 T. L. R. 693; 68 Sol. Jo. 814; 27 Cox, C. C. 621; 18 Cr. App. Rep. 81, 110, C. C. A.

Annotation—**Refd.** R. v. Tyreman (1925), 19 Cr. App. Rep. 4.

5359b. – – – **Conviction remitted.**]—(1) There ought not to be two indictments when all charges may be preferred in one.

(2) Nothing must be stated in the presence of jurors about the allegation of being a habitual criminal until the primary charge is disposed of.

(3) When a conviction as a habitual criminal has been remitted in view of the opinion of the Ct. of Criminal Appeal, it ought not to be alleged against prisoner on a subsequent trial.

(4) On the issue whether prisoner has been leading an honest life, no evidence is admissible of periods or of facts which has not been set out in the statutory notice.—R. v. TYREMAN (1925), 19 Cr. App. Rep. 4, C. C. A.

5361a. – –.]—Before a sentence of preventive detention can be passed three things are requisite: first, that prisoner shall have been convicted of being a habitual criminal; secondly, that the ct. shall have taken such a view of the substantive crime of which prisoner has then been convicted as to think it right, by reason of that crime & not for any other reason, to pass a sentence of penal servitude; & thirdly, that the ct., in the exercise of its independent discretion, shall be of opinion that by reason of the criminal habits & mode of life of prisoner it is expedient for the protection of the public that he should be kept in detention for a lengthened period of years. Sentence of preventive detention quashed where the judge at the trial had not exercised such independent discretion, but had treated the sentence as necessarily following the conviction as a habitual criminal.—R. v. PAUL, [1925] 1 K. B. 77; 94 L. J. K. B. 63; 132 L. T. 159; 88 J. P. 200; 41 T. L. R. 35; 69 Sol. Jo. 27 Cox, C. C. 660; 18 Cr. App. Rep. 128, C. C. A.

Expld. R. v. Turnbull (1926), 19 Cr. App. 155.

5369a. – – – – – .] A term of penal servitude must not be inflicted, merely to found the jurisdiction of the ct. to impose preventive detention; it must be warranted by the primary offence.—R. v. TURNBULL (1926), 19 Cr. App. Rep. 155, C. C. A.

5372a. – –.]—R. v. PAUL, No. 5361a,

5398. *Add. Annotation*—**Distd.** R. v. Douglas (1926), 19 Cr. App. Rep. 119.

5452. *Add. Annotation:* **Apld.** Freeborn v. Leeming (1925), 89 J. P. 179.

5478a. ——.]—(1) In order that a person may be convicted under Larceny Act, 1916 (c. 50), s. 28 (2), of being "found by night having in his possession without lawful excuse implements of housebreaking", it must be proved that he was found by night, in possession by night, of housebreaking implements. The finding & the possession must both be by night, & the possession must be by a free man.

(2) Where a person has pleaded "Not guilty" to an indictment & is about to stand his trial, he ought not to be invited to plead, in the presence of those who, as jurors, will have to try him, to another indictment which recites a previous conviction.—R. v. HARRIS (1924), 94 L. J. K. B. 164; 132 L. T. 672; 80 J. P. 37; 41 T. L. R. 205; 27 Cox, C. C. 746; 18 Cr. App. Rep. 157, C. C. A.

Part XIV.—Appeal to Court of Criminal Appeal.

5523. *Add. Annotation:*—**Refd.** R. v. Birch (1924), 93 L. J. K. B. 385.

5534. *Add. Annotation:* **Refd.** R. v. Cope (1925), 94 L. J. K. B. 662.

5536a. —— ——.]—The ct. will not review a summary conviction of an incorrigible rogue, but it will insist that quarter sessions, for the purpose of sentence, shall hear nothing but legal evidence.—R. v. DEAN (1921), 18 Cr. App. Rep. 133, C. C. A.

Annotation: **Refd.** R. v. Cope (1925), 94 L. J. K. B. 662.

5549a. ——.] R. v. LAMBERT (1926), 19 Cr. App. Rep. 131, C. C. A.

5550. *Add. Annotation:* **Consd.** R. v. Smith, [1925] 1 K. B. 603.

5550a. ——.]—R. v. SMITH, No. 1810b, *ante*.

5574a. —— —— **Registrar must be informed at earliest possible moment.**]—When leave is sought to add new grounds of appeal they should be communicated to the registrar at the earliest possible moment.—R. v. HODGSON (1921), 18 Cr. App. Rep. 7, C. C. A.

5585. *Add. Annotation:* **Refd.** R. v. Thompson (1925), 18 Cr. App. Rep. 167.

5585a. ——.]—An applt. may only in exceptional circumstances consent by counsel to be absent. R. v. THOMPSON (1925), 18 Cr. App. Rep. 167, C. C. A.

5607a. ——.]—In each of the following cases—(1) a convict under sentence of penal servitude & preventive detention who appeals only against the sentence of preventive detention; (2) a prisoner under sentence of imprisonment & flogging who appeals only against the flogging; (3) a prisoner under sentence of imprisonment & a recommendation to deportation who appeals only against deportation; (4) a prisoner under concurrent sentences of imprisonment & penal servitude who appeals only against the penal servitude; (5) a prisoner under one sentence who appeals only against a sentence consecutive thereon—the person appealing is an applt. within Criminal Appeal Act, 1907 (c. 23), s. 11, & should be treated as such pending the determination of his appeal.—R. v. Ross, R. v. FRIEND, R. v. BEATTIE, R. v. LLEWELLYN, R. v. YOUNG (1921), 131 L. T. 20; 88 J. P. 90; 40 T. L. R. 617; 27 Cox, C. C. 615; 18 Cr. App. Rep. 55, C. C. A.

5673a. ——.] The ct. will, if it thinks fit, hear a plea of insanity even though it was not raised at the trial.—R. v. CANHAM (1925), 18 Cr. App. Rep. 163, C. C. A.

PART XIII. SECT. 11, SUB-SECT. 5.

5504 i a. ——.] Defft. was convicted of a second offence against Liquor Licence Act, the only evidence of the previous conviction being the production of a certificate under the Act, from which it appeared that a person of the same name & address as defft. had been previously convicted before the same magistrate: *Held:* the evidence was sufficient.—R. v. ATKINSON (N.S.) (1910), 44 N. S. R. 521; 9 E. L. R. 212. **CAN.**

PART XIV. SECT. 1, SUB-SECT. 1.

ii. ——.]—An appeal lies to the Supreme Ct. of Canada under Criminal Code, s. 1024, read with sect. 1013, only where a dissenting opinion has been expressed by a member of the ct. of appeal, upon a question which that ct. deems a question of law & pursuant to its direction.—DAVIS v. R., [1924] 4 D. L. R. 513; [1924] S. C. R. 522.—**CAN.**

cc i. —— *Effect of repeal of provisions for stating case pending appeal.*]—Where the trial judge reserved a case for the ct., but before it came on for argument, the sects. of the Code allowing a stated case were repealed, & the ct. set aside the conviction & ordered a new trial:—*Held:* the amendment of the Code did not abrogate the rights possessed by prisoners on the date when they were convicted, but such rights must be determined under the old & not under the new provisions of the Code, which were not then in force.—R. v. TAYLOR & YOUNG (1924), 41 Can. Crim. Cas. 212; 56 N. S. R. 500.—**CAN.**

ss. *Jury illegally constituted—Leave of Court of Appeal necessary.*]—R. v. BOAK, [1923] 3 D. L. R. 887; [1925] S. C. R. 525; 44 Can. Crim. Cas. 218.—**CAN.**

5528 i. *Certificate granted—Only where judge has doubt on case.*]—The trial judge must have an opinion or belief of the fitness of the appeal upon questions of fact or mixed questions of law & fact involved; the burden on him would appear, therefore, to be greater than if he were asked to grant leave to appeal.—R. v. PAYETTE, [1925] 1 D. L. R. 112; [1924] 3 W. W. R. 563.—**CAN.**

5528 ii. —— *Form of certificate.*] A certificate stated generally that the case was a fit one for appeal: *Held* not such a certificate as 13 & 14 Geo. 5, c. 41, contemplated.—R. v. SCOTT & WILLIAMSON (1924), 56 O. L. R. 32; 43 Can. Crim. Cas. 361.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 2.

ai. ——.]—Where it was for the trial judge to decide whether prisoner's explanation could reasonably be true, & it was to be assumed from the fact of his finding prisoner guilty that he thought it could not reasonably be true, in which the ct. concurred:—*Held:* not the function of the ct. to retry the case.—R. v. COOKE (1923), 37 N. S. R. 362.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 3.

ai. *Jurisdiction of Supreme Court of Canada—To hear appeal from addition to sentence by lower court.*]—There is no jurisdiction in the above ct. to entertain an appeal against an addition to sentence by appellate ct., as under Criminal Code, s. 1024, the right of appeal is restricted to an appeal against the affirmance of a conviction.—GOLDHAMMER v. R., [1924] 3 D. L. R. 1009; [1924] S. C. R. 290; 5 C. R. R. 129.—**CAN.**

PART XIV. SECT. 5, SUB-SECT. 1. A.

5630 v. ——.] The ct. hearing an appeal is not warranted in weighing probabilities & substituting its view for that of the jury, to which the greatest weight must still be given.—R. v. DE BRUYN, [1924] 4 D. L. R. 496; 55 O. L. R. 507. **CAN.**

5630 vi. ——.] R. v. HOWARD (1924), 41 Can. Crim. Cas. 202. **CAN.**

PART XIV. SECT. 6, SUB-SECT. 3.

5740 iii. ——.] An application must be refused, where the person whom it was sought to call had been present in ct. at the time of the trial & available to be called by accused or his counsel if they desired to do so.—R. v. CROWAN (1924), 41 Can. Crim. Cas. 320; 57 N. S. R. 2[illegible].—**CAN.**

5766 ii. ——.] The defence having been permitted for the purpose of securing a new trial to read the affidavit of one who it contended should have been called as a witness by the prosecution, *Held:* the omission to call such witness did not result in such a miscarriage of justice, or the possibility of it, as to warrant a new trial.—R. v. GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

ag. *No opportunity of cross-examining former witness on statement at trial.*]—R. v. VYE (1923), 44 Can. Crim. Cas. 219; [1923], 3 W. W. R. 100.—**CAN.**

PART XIV. SECT. 6, SUB-SECT. 5.

m. Read now "5793 i."

5793 ii. ——.]—R. v. HUBLEY (1925), 57 N. S. R. 457.—**CAN.**

5800a. Conflicting medical views.]—The mere fact that conflicting medical views of the evidence in a case were put before the jury is not a ground for granting leave to appeal.—R. *v.* THORNE (1925), 69 Sol. Jo. 493; 18 Cr. App. Rep. 186, C. C. A.

5806a. —— Indictment alleging offence under repealed section of statute.]—Where a person is convicted on an indictment framed under a repealed section of a statute, the Ct. of Criminal Appeal will quash the conviction. —R. *v.* TAYLOR (1924), 93 L. J. K. B. 912; 88 J. P. 152; 40 T. L. R. 836; 69 Sol. Jo. 12; 22 L. G. R. 681; 18 Cr. App. Rep. 105, C. C. A.

5856a. ——.]—R. *v.* RICHARDS, No. 6230a, *post.*

5856b. ——.]—Conviction quashed on the grounds of non-direction & of receipt of inadmissible evidence.—R. *v.* HOWARTH (1926), 19 Cr. App. Rep. 102, C. C. A.

5856c. ——.]—R. *v.* BERRY (1926), 19 Cr. App. Rep. 113, C. C. A.

5870a. —— ——.]—Convictions quashed on the ground of evidence of previous convictions having been wrongly admitted.—R. *v.* GRAHAM, R. *v.* ANDERSON (1924), 18 Cr. App. Rep. 8, C. C. A.

5873a. —— ——.]—R. *v.* HASLAM, No. 2839a, *ante.*

5877a. ——.]—R. *v.* HOMER (1926), 19 Cr. App. Rep. 118, C. C. A.

5884. *Add. Annotation:*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

5887. *Add. Annotations:*—**Refd.** R. *v.* Dunkley (1920), 134 L. T. 632; R. *v.* McLean (1926), 134 L. T. 640.

5906. *Add. Annotation:*—**Consd.** R. *v.* Baldwin (1925), 133 L. T. 191.

5926a. ——.]—R. *v.* HOWARTH, No. 5856b, *ante.*

5927a. —— ——.]—Where the defence is an *alibi*, the jury must be pointedly directed on the identification.—R. *v.* PHILLIPS (1924), 89 J. P. 16; 41 T. L. R. 190; 18 Cr. App. Rep. 151, C. C. A.

5927b. —— Direction as to time.]—R. *v.* SMITH, No. 6066a, *post.*

5927c. ——.]—Where an *alibi* is set up as a defence, the jury must be directed that if it fails they must consider the facts of the case on their merits.—R. *v.* CHEW (1926), 19 Cr. App. Rep. 73, C. C. A.

5929a. —— ——.]—When in a trial for larceny asportation of documents has been proved, there must be a direction whether it took place *animo furandi* or not.—R. *v.* JONES (1925), 19 Cr. App. Rep. 39, C. C. A.

5932a. —— By bailee—Intent to defraud.]—R. *v.* MOORE, No. 3007a, *ante.*

5932b. Breaking & entering—Breaking.]—R. *v.* LLOYD, No. 2839b, *ante.*

5932c. —— ——.]—On an indictment charging breaking & entering, a breaking in law must be proved, & the jury must be distinctly charged on this point.—R. *v.* BRIERLEY (1924), 18 Cr. App. Rep. 136, C. C. A.

5938a. —— ——.]—The gist of the crime of obtaining by false pretences is an intent to defraud: direction on this point must be clear.—R. *v.* RENTON (1925), 19 Cr. App. Rep. 33, C. C. A.

5938b. —— ——.]—On a charge of obtaining by false pretences there must be a direction on the issue of intent.—R. *v.* KAY (1925), 19 Cr. App. Rep. 42, C. C. A.

5959. *Add. Annotations:*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

5976. *Add. Annotation:*—**Folld.** R. *v.* Moore (1924), 18 Cr. App. Rep. 29.

PART XIV. SECT. 7, SUB-SECT. 1.

b i. ——.]—Deft. was tried on an indictment charging commission of an offence & was convicted of an "attempt to commit" that offence:—*Held:* the evidence was sufficient to sustain the verdict, & his appeal must be dismissed. —R. *v.* DINO (1924), 57 N. S. R. 196. —CAN.

b ii. ——.]—Where accused is charged with having committed a crime at a named place in a named county & province, & a place with such name is referred to in the evidence at the trial, the fact that there is nothing in the evidence to show that the place is within such county or province:—*Held:* not such an omission as to give ground for an appeal.—R. *v.* LAFRETTE, [1925] 1 D. L. R. 112; [1924] 3 W. W. R. 863. —CAN.

b iii. ——.]—Where the Crown's case was founded on the evidence of a very young child, who contradicted herself on the vital point in the trial, & on several minor matters:—*Held:* a conviction founded on such evidence could not be sustained.—R. *v.* CHIONAS (1925), 34 B. C. R. 554.—CAN.

PART XIV. SECT. 7, SUB-SECT. 4.

5824 v. ——.]—R. *v.* BERNIER, [1925] 2 D. L. R. 237; 43 Can. Crim. Cas. 301.—CAN.

5824 vi. ——.]—Defts. were convicted of the offences of conspiring to defraud a city corpn. of money due to the corpn. for taxes:—*Held:* an inference of guilty knowledge or belief could not properly be drawn beyond all reasonable doubt, & with such degree of certainty as would warrant the convictions, which were accordingly quashed.—R. *v.* EPSTEIN, R. *v.* WALKER, R. *v.* SPERON (1925), 43 Can. Crim. Cas. 348; 56 O. L. R. 587.—CAN.

5824 vii. ——.]—Deft. was convicted of rape:—*Held:* having regard to the evidence, the verdict was unreasonable & could not be supported & must be set aside.—R. *v.* RUSSELL (1925), 58 N. S. R. 113.—CAN.

PART XIV. SECT. 7, SUB-SECT. 5.

a (p. 522) i. —— *Irregularities at former trial—Prosecution for perjury.*]—The ct. can take into consideration circumstances & irregularities as to evidence, which occurred not at the trial, the verdict at which is in appeal, but at a former trial where the perjury for which accused has been convicted was alleged to have been committed.—R. *v.* CZERLENSKI, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.—CAN.

PART XIV. SECT. 7, SUB-SECT. 7.—A. (b).

ab. *Bigamy—Felonious intent.*]—Where the trial judge directed the jury that if accused intended to be married a second time, his first wife being alive to his knowledge & the first marriage being a lawful marriage, there was felonious intent:—*Held:* this direction was right.—R. *v.* KENNEDY, [1923] S. A. S. R. 183.—AUS.

PART XIV. SECT. 7, SUB-SECT. 7.—C. (a).

6004 v. ——.]—In directing the jury, the judge gave them the impression that mere knowledge of the crime without any aiding or abetting thereof was sufficient to make accused a principal offender:—*Held:* a misdirection, & new trial ordered.—R. *v.* DUTCHAK, [1924] 4 D. L. R. 973.—CAN.

6016 iv. ——.]—It was contended that the judge misdirected the jury in reading to them a sect. of the Criminal Code which had been repealed before the trial took place:—*Held:* as the sect. in question was simply a statement of the common law & could not prejudicially affect prisoner, the case was within the Code, s. 1014 (c), & the objection had no effect.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

6016 v. ——.]—The fact that the trial judge in charging the jury misstated the law will not, in view of his subsequent correction of this statement after the jury were called back, justify the setting aside of the conviction.—STEELE *v.* R., [1924] 4 D. L. R. 175; [1924] 1 W. W. R. 1146. —CAN.

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) 1.

6019 iii. ——.]—Where homicide was proved & was not denied, but the defence of temporary insanity caused by intoxicating liquor was set up:—*Held:* the omission from the trial judge's charge of an instruction that accused was entitled to the benefit of a reasonable doubt was a substantial wrong entitling him to a new trial.—R. *v.* PAYETTE, [1925] 2 W. W. R. 741; 44 Can. Crim. Cas. 209; 35 B. C. R. 81.—CAN.

PART XIV. SECT. 7, SUB-SECT. 8.—A.

vi. —— *Criminal Code, s. 1063.*]—Deft. was convicted of having had

6056. *Add. Annotations :*—**Consd.** R. v. Evans (1924), 88 J. P. 196. **Apld.** R. v. Beebe (1925), 133 L. T. 736. **Refd.** R. v. Ross (1924), 18 Cr. App. Rep. 141.

6063. *Add. Annotation :*—**Refd.** R. v. Roberts & Morriss (1926), 134 L. T. 635.

6066a. ——— Direction that corroboration exists not warranted on facts.]—(1) It is a ground for quashing a conviction, if the jury is directed that there is corroboration of an accomplice's evidence, when the ct. thinks there is none.

(2) In dealing with the defence of an *alibi*, the ct. of trial ought to direct the jury on any part of the period of time which is relevant.

(3) Without saying that in every case it is proper to sentence an accomplice pleading guilty before he gives evidence for the Crown, it is obvious that where he is not sentenced it is more than ever necessary to warn the jury about accepting his testimony, because his object is to mitigate his own punishment (Avory, J.).—R. v. Smith (1924), 18 Cr. App Rep. 19, C. C. A.

6066b. —— ——.]—Where the evidence against a prisoner is the uncorroborated evidence of an accomplice the judge must warn the jury that, while they may convict on such evidence, it is always, not generally, dangerous to do so. It is wrong for the judge to tell the jury that if they are quite certain in such a case that the accomplice is telling the truth they ought to act on it.—R. v. Beebe (1925), 133 L. T. 736; 89 J. P. 175; 41 T. L. R. 635; 28 Cox, C. C. 47; 19 Cr. App. Rep. 22, C. C. A.

6067a. —— —— ——.]—The correct direction on a charge of indecent assault is that it is not safe to convict on the uncorroborated evidence of prosecutrix, but that the jury, if they are satisfied of her veracity, may, after paying attention to that warning, nevertheless convict.—R. v. Jones (1923), 19 Cr. App. Rep. 40, C. C. A.

6068a. —— —— —— ——.]—When consent is the defence to a charge of rape, the jury must be warned of the absence of corroboration of the female's story.—R. v. Salman (1924), 18 Cr. App. Rep. 50, C. C. A.

6069a. —— —— —— ——.]—When the only witness for the Crown on a charge of larceny is the receivor of the stolen property, the jury should be warned that they may require corroboration.—R. v. Dixon (1925), 19 Cr. App. Rep. 36, C. C. A.

6072a. —— **Evidence of young children.**]—R. v. Marshall, No. 3136a, *ante*.

6090. *Add. Annotations :*—**Foll.** R. v. Dennis, R. v. Parker, [1924] 1 K. B. 867; **Apld.** R. v. Williams (1925), 19 Cr App. Rep. 67.

6094. *Add. Annotation :*—**Foll.** R. v. Hussey (1924), 18 Cr. App. Rep. 121.

6152. *Add. Citation :*—31 T. L. R. 401.

6177a. —— ——.]—Reduction of term of sentence in order to carry out intention of the trial judge.—R. v. Fielder (1926), 135 L. T. 64; 90 J. P. 96; 28 Cox, C. C. 180; 19 Cr. App. Rep. 87, C. C. A.

6183a. —— ——.]—The ct. will amend an incorrect record, though it may not vary the sentence.—R. v. Sharman (1925), 19 Cr. App. Rep. 43, C. C. A.

6186a. —— ——.]—R. v. Pilley (1926), 19 Cr. App. Rep. 101, C. C. A.

6187a. Sentence illegal.]—Sentence reduced in view of its illegality.—R. v. Jackson (1926), 19 Cr. App. Rep. 150, C. C. A.

6230a. Housebreaking—To receiving stolen property.]—(1) Evidence improperly admitted

carnal knowledge of a feeble-minded girl :—*Held :* as there was no evidence in corroboration, the conviction must be quashed.—R. v. Simms (1924), 43 Can. Crim. Cas. 28; 57 N. S. R. 476.—CAN.

PART XIV. SECT. 7, SUB-SECT. 8.—B.

6264 vii. —— ——.]—The rule as to the danger of convicting upon the uncorroborated testimony of an accomplice is not a strict rule of law, but merely one of practical wisdom & carefulness, & the omission of the trial judge to give the customary warning, even if technically an error, does not constitute such a miscarriage of justice or substantial wrong as to vitiate the conviction.—R. v. Gallagher, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—CAN.

PART XIV. SECT. 7, SUB-SECT. 10.

a (p. 538) i. *One juryman not sworn.*]—Where one of the additional panel of jurymen summoned, who was present & answered to his name when first called by the clerk, was not called to be sworn by the clerk who announced that the panel was exhausted, which made it necessary to secure an additional juryman from among those who had stood aside :—*Held :* an objection could not be allowed, as no substantial wrong or miscarriage of justice had occurred.—R. v. McLachlan (1923), 58 N. S. R. 413; 41 Can. Crim. Cas. 349.—CAN.

PART XIV. SECT. 7, SUB-SECT. 11.—K.

ai. *Disqualification of juror.*]—*Held :* such disqualification did not cause a miscarriage of justice.—R. v. Boak, [1925] 3 D. L. R. 857; [1925] S. C. R. 525; 44 Can. Crim. Cas. 218; *revsg.*, [1925] 2 D. L. R. 803; [1925] 2 W. W. R. 40; 43 Can. Crim. Cas. 402; 35 B. C. R. 256.—CAN.

PART XIV. SECT. 8, SUB-SECT. 1.—A.

ak. *Jurisdiction of court.*]—R. v. Fox. R. v. Gammome (1925), 44 Can. Crim. Cas. 262.—CAN.

b i. ——.]—No definite principle can be laid down upon which a ct. of appeal should proceed in dealing with appeals for the reduction of sentences on the ground of excessive severity; all the circumstances should be carefully taken into account in each instance & full consideration given to matters of mitigation.—R. v. Finlay, [1924] 4 D. L. R. 829; 3 W. W. R. 427.—CAN.

b ii. ——.]—A sentence should be interfered with by a ct. of appeal only where the trial judge proceeded on some wrong principle or gave too great weight to particular circumstances; the fact that individual members of the ct. would have imposed a different sentence is not sufficient.—R. v. Gallagher, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—CAN.

b iii. ——.]—In considering the adequacy of a sentence, the ct. should be guided by the same considerations whether the appeal be taken for the reduction or increase of the sentence.—R. v. Hicks, [1925] 2 D. L. R. 1000; [1925] 1 W. W. R. 1155; 44 Can. Crim. Cas. 12; 19 Sask. L. R. 369.—CAN.

k i. —— *Abortion.*]—An appeal by an abortion-monger against a sentence of four years' imprisonment imposed on her on a conviction for abortion, dismissed.—R. v. Peters, [1925] 4 D. L. R. 671; [1925] 3 W. W. R. 434; 35 Man. L. R. 290.—CAN.

PART XIV. SECT. 8, SUB-SECT. 1.—B.

a i. —— ——.]—Where an illegal punishment has been imposed, as imprisonment with hard labour where hard labour is not authorised for the offence in question, the ct. will not exercise its powers under Criminal Code, s. 1124, by striking out the unauthorised portion of the penalty in order to uphold the conviction after the illegal punishment has been suffered in whole or in part.—R. v. Low Quong, [1924] 3 D. L. R. 666; 2 W. W. R. 695; 33 B. C. R. 522.—CAN.

PART XIV. SECT. 9.

6222 i. *Carnal knowledge—To indecent assault.*]—R. v. Simons (1925), 34 B. C. R. 554.—CAN.

6225 i. *Obtaining by false pretences—To attempting to obtain.*]—Where a party has been convicted of obtaining goods by false pretences, & on the indictment the jury could have found him guilty of some other offence, e.g. attempting to obtain, & it clearly appears by the jury's finding that they must have been satisfied of facts which proved him guilty of attempting :—*Held :* a ct. of appeal, instead of allowing or dismissing the appeal, may substitute a verdict of guilty of attempting to obtain.—R. v. McMartin, [1924] 3 D. L. R. 297; 43 Can. Crim. Cas. 268; 51 N. S. R. 255.—CAN.

at the trial may be a ground for quashing a conviction.

(2) On an indictment charging housebreaking, & knowingly receiving stolen property, if the latter count was not effective, the ct., when quashing the conviction in the former, will not substitute a verdict for receiving, as applt. was not, in fact, called upon to explain his possession.—R. *v.* RICHARDS (1924), 18 Cr. App. Rep. 144, C. C. A.

6234a. —— —— **Exclusion of women from jury.**] —The discretion which a judge at a trial has of excluding women from a jury must be exercised judicially, & unless it is shown that it has not been so exercised the ct. will not order a *venire de novo*.—R. *v.* VAQUIER (1924), 18 Cr. App. Rep. 112, C. C. A.

6234b. —— —— **Denial of right of challenge.**]—If deft. is wrongfully denied his right to challenge, the ct. will award a *venire de novo*. —R. *v.* WILLIAMS (1925), 19 Cr. App. Rep. 67, C. C. A.

6237a. —— ——.]—R. *v* LLOYD, No. 2567a, *ante*

6271. Before this case insert "*See, also,* CROWN PRACTICE, No. 797a.

Add. Annotation:—**Folld.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.

6284. *Add. Annotation:*—**Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.

6296. *Add. Annotation:*—**Mentd.** Russell *v.* Russell (1924), 93 L. J. P. 97.

Part XVI.—Costs, Compensation, Rewards and Restitution.

6505. *Add. Annotations:*—**Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51. **Mentd.** Nanka-Bruce *v* Commonwealth Trust (1925), 94 L. J. P. C. 169.

Part XVII.—Offences against the Sovereign.

6722. For "(1628)" read "(1541)."
6723. For "(1628)" read "(1539)."
6726. For "(1628)" read "(1443)."
6727. For "(1628)" read "(1494)."
6732. For "(1628)" read "(1453)"
6733. For "(1628)" read "(1462)."

Part XVIII.—Offences against Public Tranquillity.

6887. *Add. Annotation:*—**Refd.** Motor Union Insce. *v.* Boggan (1923), 130 L. T. 588.
6890. *Add. Annotation:*—**Refd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.
6931. *Add. Annotation:*—**Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.
7026. *Add. Annotation:*—**Refd.** Anchor Trust Co. *v.* Bell, [1920] Ch. 805.

Part XX.—Offences relating to Administration of Justice.

7276. *Add. Annotation:*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.
7416. *Add. Annotation:*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

PART XVII. SECT. 1, SUB-SECT. 1.

6515 i. *Breach of allegiance to the Crown—Status of State possessing internal sovereignty.*]—The crime of high treason can be committed against a State which possesses internal sovereignty, even though its external powers may be limited in certain respects. The Govt. of the Union of South Africa, as mandatory of South-West Africa, possesses sufficient internal sovereignty to warrant a charge of high treason against an inhabitant of the mandated territory who takes up arms with hostile intent against the Govt. of that territory.—R. *v.* CHRISTIAN, [1924] App. D. 101.—S. AF.

PART XVII. SECT. 1, SUB-SECT. 4.

6 i. ——.]—The crime of treason is constituted by the perpetration of armed attacks upon the State or Govt. with hostile intent. The existence or otherwise of such hostile intent is to be gathered from all the circumstances of the case. Where accused committed acts of hostility towards the State by taking up arms with the express intention of coercing the Govt. & enforcing the will of himself & those acting with him upon the Govt.:—*Held:* accused had been properly convicted of treason —R. *v.* ERASMUS, [1923] App. D. 73.—S. AF.

Part XXI.—Offences relating to Arrest, the Prosecution and Punishment of Criminals, and the Execution of Civil Process.

7683. *Add. Annotation :*—**Reld.** Glamorgan County Council v. Glasbrook, [1924] 1 K. B. 879.

7685a. Assaulting warder on duty.]—A convict who assaults a warder on duty is liable to be sentenced by a ct. of summary jurisdiction to six months' hard labour, that being the punishment provided by Prevention of Crimes Act, 1871 (c. 112), s. 12, for assaulting a constable when in the execution of his duty. — Pointing v. Wilson (1926), 43 T. L. R. 44; 70 Sol. Jo. 1091; 90 J. P. Jo. 676.

Part XXII.—Offences affecting the Property and Prerogative of the Crown.

7785. *Add. Annotation :* **Reld.** R. v. Stokes (1925), 134 L. T. 170.

Part XXIV.—Offences on the High Seas.

7864. *Citation :*—Delete 33 J. P. 701.

7866. *Add. Annotation :* **Reld.** Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271.

7873. *Add. Annotation :* **Reld.** *Re* Letters Patent No. 130,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

Part XXV.—Offences relating to Foreign Nations.

7899. *Add. Annotation :* **Reld.** Browning v. Franklin Valley Collieries, [1926] 1 K. B. 522.

Part XXVII.—Offences relating to Marriage.

7979. *Add. Annotation :*—**Mentd.** Perlak Petroleum Maatschappij v. Deen, [1924] 1 K. B. 111.

8026. *Add. Annotation :* **Reld.** R. v. Denyer, [1926] 2 K. B. 258.

8038. *Add. Annotation :* **Reld.** R. v. Denyer, [1926] 2 K. B. 258.

PART XVIII. SECT. 7.

6821 a. — — — *Meaning of "prize-fight."*]—R. v. Pelkey (1913), 21 W. L. R. 804; 4 W. W. R. 1055; 11 D. L. R. 701; 6 Alta. L. R. 103. **CAN.**

PART XX. SECT. 2, SUB-SECT. 5. A.

7 i. — — — — *Absence of examiner. Failure to file affidavit.*]—An examination for discovery in a county ct. action not conducted in the presence of the deputy clerk is not an examination taken pursuant to County Cts. Act, R. S. M., 1913 (c. 44), & perjury does not lie against the person examined, even though the solrs. agreed that the clerk need not remain during the examination.

The fact that no affidavit was filed prior to such examination is not a bar to a prosecution for perjury, where accused voluntarily agreed to submit to & attended the examination & was sworn & examined. — R. v. Allan, [1925] 1 D. L. R. 57; [1925] 1 W. W. R. 715; 43 Can. Crim. Cas. 118. — **CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—A.

a i. —— *Witness protected by Evidence Act.*]—Evidence given at a trial at which the witness is granted the protection of Canada Evidence Act, 1912, is not receivable against him on a prosecution for perjury on other occasions, *e.g.*, on an inquest & preliminary hearing. — R. v. Kruszewski, [1925], 2 D. L. R. 167; [1925] 1 W. W. R. 426; 43 Can. Crim. Cas. 299. — **CAN.**

PART XX. SECT. 2. SUB-SECT. 8. C.

i. — — *Copy of affidavit.*] Where deft. was charged with making a false affidavit in the United States of America: *Held:* a copy of the false affidavit duly authenticated by a witness called before the judge was rightly admitted. — United States v. Snyder, [1925] 1 D. L. R. 260; 43 Can. Crim. Cas. 692; 37 N. S. R. 421. —**CAN.**

PART XX. SECT. 2, SUB-SECT. 12. — C.

m i. —— *Affidavit required by foreign law.*]—Where deft. was charged with making in America a false affidavit, which affidavit was required by American law: — *Held:* notwithstanding the affidavit had not been made in a judicial proceeding, the crime charged constituted perjury under the law of Canada. — United States v. Snyder, [1925] 1 D. L. R. 260, 43 Can. Crim. Cas. 92, 37 N. S. R. 421. **CAN.**

PART XXI. SECT. 4.

1 i. — — — *Search warrant.*] A search warrant issued under Liquor Act, 1922, s. 90, does not authorise the constable, who suspects that a person is having the premises with liquor, when no liquor has been found on the premises, to follow him & forcibly bring him back to the premises where the search is being made. If in doing so he is assaulted by such person, the latter cannot be convicted of assaulting the constable while acting in the discharge of his duty under the search warrant. — R. v. Diamond, [1924] 1 D. L. R. 1033, 1 W. W. R. 454; 42 Can. Crim. Cas. 96; 20 Alta. L. R. 60. **CAN.**

PART XXVII. SECT. 1, SUB-SECT. — A.

7956 ii. — — — — — — *Proof of first marriage.*]—On an indictment for bigamy the first marriage must be strictly proved, but where the person charged has pleaded guilty, it is an admission that strict proof of the marriage can be made &

Part XXVIII.—Offences against Decency and Morality.

8110. *Add. Annotation* :—**Reld.** R. *v.* Bailey, [1924] 2 K. B. 300.

Part XXIX.—Offences affecting Public Health, Safety and Convenience.

SECT. 2.—**OFFENCES BY INNKEEPERS**
(Vol. XV., p. 761).
After this sect. add the following new sect. :—

SECT. 3.—**DANGEROUS DRUGS.**
See FOOD & DRUGS, Vol. XXV., pp. 115, 116, No. 388, &, *generally*, MEDICINE & PHARMACY.

Part XXXI.—Offences relating to Trade.

8195. *Add. Annotations* :—**Apld.** Reynolds *v.* Shipping Federation, [1924] 1 Ch. 28. **Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Reld.** Brimelow *v.* Casson, [1924] 1 Ch. 302; Sorrell *v.* Smith, [1924] 1 Ch. 506; Thompson *v.* British Medical Assocn., [1924] A. C. 764; British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

8198. *Add. Annotations* :—**Distd.** Reynolds *v.* Shipping Federation, [1924] 1 Ch. 28. **Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Reld.** Brimelow *v.* Casson, [1924] 1 Ch. 302; G. W. K. *v.* Dunlop Rubber Co (1926), 42 T. L. R. 376.

Part XXXIII.—Offences against the Person.

8247. *Add. Annotation* :—**Consd.** R. *v* Bateman (1925), 94 L. J. K. B. 701.

8284. *Add. Annotations* :—**Consd.** Williams *v.* Guest, Keen & Nettlefolds, [1926] 1 K. B. 497. **Reld.** Carr *v.* Port of Glasgow (1923), 16 B. W. C. C. 331; Hutchinson *v.* Kiveton Park Colliery Co., [1926] 1 K. B. 279.

8338. *Add. Annotations* :—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95. **Reld.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

8498. *Add. Annotation* :—**Reld.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

8575. *Add. Annotation* :—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

precludes the necessity for proof.—R. *v.* Roor, [1924] 3 D. L. R. 985; 57 N. S. R. 335.—CAN.

PART XXVII. SECT. 1, SUB-SECT. 3.—C.

p l. ——.)—Accused & his wife were Roman Catholics; they had never lived together, as accused left for active service immediately after the marriage. On his return he informed the priest who had performed the ceremony that he & his wife were first cousins, & asked whether the marriage was valid. The priest replied that in the eyes of the Church the marriage was null & void, & as though it had never taken place. Accused, honestly believing he was free, went through the form of marriage with another woman :—*Held* : accused had been under no mistake of law, & was rightly convicted.—R. *v.* KENNEDY, [1923] S. A. N. R. 188.—AUS.

PART XXVII. SECT. 1, SUB-SECT. 3.—D.

9038 l. *Effect of mistaken belief.*)—It is a defence in law to a charge of bigamy that prisoner, at the time of the alleged bigamous marriage, believed, in good faith & on reasonable grounds, that he had been divorced from the bond of his first marriage, if in fact he had not been divorced.—R. *v.* CAMPBELL, [1926] N. Z. L. R. 321.—N.Z.

PART XXVIII. SECT. 6, SUB-SECT. 1.—B.

r (p. 755) l. ——.)—During a period of six weeks prostitutes resorted to a furnished flat, of which two men were the tenants & occupiers. Some of them went on the invitation of the tenants, others were taken by friends of the tenants, with their knowledge & consent :—*Held* : if the prostitution had been with the occupiers of the flat only, no offence would have been committed, in respect that the occupiers could not "permit" their own acts; & it was immaterial that no profit was made by accused.—GIBGAWAY *v.* STRATHERN, [1925 S. C. (J.) 31.—SCOT.

PART XXXIII. SECT. 1, SUB-SECT. 1.—A.

h l. —— —— ——.)—H.M. ADVOCATE *v.* SAVAGE, [1923] S. C. (J.) 49.—SCOT.

PART XXXIII. SECT. 1, SUB-SECT. 1.—F. (a).

8312 l. *Prosecution answered by use of weapon.*)—Appct., who had grounds of suspicion that his wife had misconducted herself with another man, stabbed her in the legs & lower part of the body with a long knife, causing her to bleed to death in a few minutes :—*Held* : an application for leave to appeal from a conviction for murder must be dismissed.—R. *v.* BUTELEZI, [1925] App. D. 160.—S. AF.

PART XXXIII. SECT. 1, SUB-SECT. 1.—F. (d.) ii.

d l. ——.)—The fact that while a child is flouting its father's authority its mother "eggs it on" may be found to constitute provocation within Criminal Code, s. 261, under which culpable homicide, which would otherwise be murder, may be reduced to manslaughter.—R. *v.* PAYETTE, [1925] 2 W. W. R. 747; 44 Can. Crim. Cas. 209; 35 B. C. R. 81.—CAN.

PART XXXIII. SECT. 1, SUB-SECT 1.—H. (a).

m l. —— —— ——.)—R. *v.* BEVIS, [1925] 1 D. L. R. 747; 43 Can. Crim. Cas. 229; 57 N. S. R. 513.—CAN.

PART XXXIII. SECT. 1, SUB-SECT. 1.—N. (a).

8504 lii. —— —— ——.)—A Christian Science practitioner who gave a sick child "absent treatment," *i.e.* prayer, but who prescribed no medicine or other treatment, & who was not shown to have advised the parents not to call in a physician or to have aided, abetted or counselled them to abstain from providing proper medical attendance for the child :—*Held* : wrongly convicted of manslaughter of the child.—R. *v.* ELLAM, [1925] 3 D. L. R. 447; [1925] 2 W. W. R. 545; 44 Can. Crim. Cas. 75; 35 Man. L. R. 161.—CAN.

8645. *Add. Annotation :*—**Refd.** Pratt v. Patrick, [1924] 1 K. B. 488.

8665. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8666. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8667. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8668. *Add. Annotation :* —**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8672a. —— ——.]—Where a doctor is consulted, as possessing medical skill & knowledge, by or on behalf of a patient he owes a duty to that patient to use due caution in undertaking the treatment. If he accepts the responsibility & undertakes the treatment & the patient submits to his direction & treatment accordingly he owes a duty to the patient to use a fair & reasonable degree of diligence, care, knowledge, skill, & caution in administering the treatment. To support an indictment for the manslaughter of a patient, however, the prosecution must satisfy the jury that the negligence or incompetence of the doctor went beyond a mere matter of compensation & showed such disregard for the life & safety of the patient as to amount to a crime against the State & conduct deserving punishment.—R. v. Bateman (1925), 94 L. J. K. B. 791; 133 L. T. 730; 89 J. P. 162; 41 T. L. R. 557; 69 Sol. Jo. 622; 28 Cox, C. C. 33; 19 Cr. App. Rep. 8, C. C. A.

8674. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8676. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8677. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8679. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8680. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8681. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8682. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8684. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8688. *Add. Annotation :*—**Consd.** R. v. Bateman (1925), 94 L. J. K. B. 791.

8793a. —— ——.]—(1) The question whether or not a statement made by a person on whom a fatal attack has been made is a dying declaration, i.e. whether or not it has been made by that person while in a hopeless & settled anticipation of immediate dissolution, is for the judge at the trial of the person charged with the murder or manslaughter of the person in question &, to answer it, all the circumstances of each case must be regarded.

(2) Rules as to questions by police officers to detained persons commented on.—R. v. Booker (1924), 88 J. P. 75; 18 Cr. App. Rep. 47, C. C. A.

9023a. Within Children Act, 1908 (c. 67), s. 12 (1).]—An assault within the above sect. must be one which is likely to cause unnecessary suffering or injury to the health of the child.

Applt., who was the stepfather, & had the custody or care, of a girl of eleven years of age, was charged under the above sect. with wilfully assaulting the girl in a manner likely to cause her unnecessary suffering. The evidence of the girl was that applt. committed acts of indecency, not to her, but in her presence, & that when she screamed he put his hand over her mouth:—*Held:* this was not an assault within the sect.—R. v. Hatton, [1925] 2 K. B. 322; 94 L. J. K. B. 863; 133 L. T. 735; 89 J. P. 164; 41 T. L. R. 637; 28 Cox, C. C. 43; 19 Cr. App. Rep. 29, C. C. A.

9036. *Add. Annotation :*—**Refd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75.

9103a. —— ——.]—The old law that the owner of a house, or members of his family, may kill a trespasser who would forcibly dispossess him of the house, although such householder, or members of his family, has not previously retreated until no means of escaping his assailant are left to him, has not been amended or modified by modern practice.—R. v. Hussey (1924), 89 J. P. 28; 41 T. L. R. 205; 18 Cr. App. Rep. 160, C. C. A.

9161. *Add. Annotations :*—**Mentd.** Britannia Hygienic Laundry Co. v. Thornycroft (1925), 94 L. J. K. B. 858; The Paludina, [1925] P. 40.

PART XXXIII. SECT. 1, SUB-SECT. 1.—N. (c) i.

8612 i. *Must be calculated to endanger life.*]—Criminal Code, s. 247, attaches no criminal responsibility to the mere omission, without lawful excuse, to perform the duty of taking reasonable precautions against & of using reasonable care to avoid endangering human life. To entail criminal responsibility there must be some physical consequences resulting from such omission; the danger itself is not a consequence within the sect.—R. v. Hunt (1923), 55 O. L. R. 48.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—O. (b).

8630 iv. ——.]—Where accused, driving a motor car at night, entered a road which being under repairs was closed to traffic & ran over & killed two coolies, who were sleeping on the road with their bodies completely covered up, except for their faces:—*Held:* accused was not guilty of causing death by a rash & negligent act.—Smith v. R. (1925), I. L. R. 53 Calc. 333.—**IND.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—O. (g).

8694 v. ——.]—R. v. Choyen (1924), 42 Can. Crim. Cas. 156.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—Q. (b) i.

8 i. —— ——.]—In a murder trial where the victim's throat had been cut so that he was unable to speak, evidence of questions put to deceased by the prosecution's witnesses & answers giving by nodding the head & making signs, amount to "verbal statements" under Evidence Act, s. 32, & are admissible as a dying declaration.—Ranga v. R. (1924), I. L. R. 5 Lah. 305.—**IND.**

PART XXXIII. SECT. 1, SUB-SECT 1.—Q. (b) iii.

8741 xix. ——.]—A native when dying from injuries inflicted upon him said that he was "dead" or had been "killed." He then sent for his children & relatives, but did not take farewell of them, saying that he would say more when the pain allowed or when he was better. He then made a statement implicating applt.:—*Held:* reversed when he made the statement had not a settled hopeless expectation of death, & the statement should not have been admitted in evidence as a dying declaration.—R. v. Nagoma, [1925] App. D. 461.—**S. AF.**

PART XXXIII. SECT. 9.

a] *Injury caused in attempting to stop breach of peace.*]—A person using the force necessary to prevent a continuance or renewal of a breach of the peace, & struck by the party he was attempting to control:—*Held:* justified in striking back.—R. v. Manson (1925), 43 Can. Crim. Cas. 50; [1925] 1 W. W. R. 671.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 1.—D.

9281 i. *Consent obtained by fraud—What amounts to fraud.*]—Cohabitation following a feigned marriage is not rape under the law of Canada. It cannot be said as a general proposition, with regard to rape, that fraud vitiates consent. The only sorts of fraud which destroy the effect of a woman's consent

9311. *Add. Annotation :—* **Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

9320a. ——.]—In charges of sexual offences corroboration of the testimony of prosecutrix is not in law essential, but is in practice required.

If, on the trial of such a charge, there is corroboration on one count referring to one date, but there is none on another about another date, & the ct. rejects the corroboration on the former, it being possible that the jury gave credit to it on both counts, it may quash a conviction on both.—R. *v.* BERRY (1924), 18 Cr. App. Rep. 65, C. C. A.

9320b. What amounts to corroboration.]—The mere fact that the accused preserves a letter written to him by prosecutrix of a charge of a sexual offence is not corroboration of her evidence: nor is his mere silence when he is charged with the offence.—R. *v.* MARSH (1925), 19 Cr. App. Rep. 27, C. C. A.

9336. *Add. Annotation :—* **Refd.** R. *v.* Mosley, [1924] 2 K. B. 187.

9340. *Add. Annotation :* **Refd.** R. *v.* Roberts & Morris (1926), 131 L. T. 635.

9399a. — — — —.]—Resp. married his wife in 1916 & a child was born in 1917. In 1920 resp. entered into a written separation agreement with his wife, whereby resp. was to pay his wife 25*s.* a week & his wife was to maintain herself & the child, of which she was to have the sole custody & control without any interference by resp., but resp. was entitled to have reasonable access to the child. Resp failed to make the payments under the agreement & fell into arrears to the amount of about £100. An information was preferred against resp. for neglecting the child in a manner likely to cause her unnecessary suffering or injury to her health, contrary to Children Act, 1908 (c. 67) :—*Held :* the fact of the separation agreement, without regard to the way in which its obligations had been performed, did not get rid of the legal presumption that resp. had the custody of the child, & the case must be remitted to the justices to decide whether in fact resp. had wilfully neglected the child in the manner alleged.—BROOKS *v.* BLOUNT, [1923] 1 K. B 257; 92 L. J. K. B. 302; 128 L. T. 607; 87 J. P. 64; 39 T. L. R. 168; 67 Sol. Jo. 299; 21 L. G. R. 150; 27 Cox, C. C. 399, D. C.

9458. *Add. Annotation :—* **Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

Part XXXIV.—Offences against Property.

9408. *Add. Annotation :* **Refd.** Lake *v.* Simmons, [1926] 1 K. B. 366.

9499. *Add. Annotations :* **Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51; Lowther *v.* Harris (1926), 43 T. L. R. 21.

9500. *Add. Annotations :* **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586; Lowther *v.* Harris (1926), 43 T. L. R. 21.

9537. *Add. Annotations :* **Apld.** Lake *v.* Simmons, [1926] 2 K. B. 51. **Consd.** Lowther *v.* Harris (1926), 43 T. L. R. 21.

After this case add "*See, also*, INSURANCE, Vol. XXIX., p. 417, No. 3258."

9553. *Add. Annotation :* **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

9769. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Mentd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 107.

9952. Read now "**9955.**"

9953. Read now "**9956.**"

9954. Read now "**9952.**"

9955. Read now "**9953.**"

9956. Read now "**9954.**"

10,116. *Add. Citations :*—93 L. J. K. B. 230; 130 L. T. 320; 68 Sol. Jo. 380; 27 Cox, C. C. 579.

10,143. *Add. Annotation :*—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

are frauds as to the nature of the act itself or as to the identity of the person how does the act. PEOPLE OF CALIFORNIA STATE *v.* SKINNER, [1924] 2 W. W. R. 209; 33 B. C. R. 555.—**CAN.**

c. For "**c.** *By misrepresentation or fraud : Personation of husband*" read "**9295 I.** *Conditions negativing consent : Personation of husband.*"

d. Read now "**9295 II.**"

9295 iii. — — — — *What amounts to : Not obtaining consent by feigned marriage.*]—PEOPLE OF CALIFORNIA *v.* SKINNER, [1924] 2 W. W. R. 209; 33 B. C. R. 555.—**CAN.**

9295 iv. — — — — *Former husband.*] *Held :* an indictment for rape was relevant which bore that the woman was the wife of a second husband who was alive, while the person said to be personated was the woman's former husband who had been officially reported as killed in action.—H.M. ADVOCATE *v.* MONTGOMERY, [1926] S. C. (J.) 2.—**SCOT.**

PART XXXIII. SECT. 13, SUB-SECT. 1. —E.

9307 I. *What amounts to corroboration.*]—Evidence of a witness that he saw accused & the girl leave a dance hall under suspicious circumstances at 11.30 on the night of the alleged seduction amounts to corroboration so as to justify the charge going to the jury.—STEELE *v.* R., [1924] 4 D. L. R. 175; [1924] 1 W. W. R. 1116.—**CAN.**

PART XXXIII. SECT. 14, SUB-SECT. 1. —A.

q I. — — — — A person having a domicil out of Canada, who leaves his family in Canada without means, may be convicted of failing to support his family in Canada.—R. *v.* SCOTT (1925), 44 Can. Crim. Cas. 117.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 9. —B. (b).

sl. *Goods on approval—Conversion of goods.*]—Where a person takes goods on approval under an agreement that property therein was to pass only if he exercised his option to take them, & paid cash in full for certain articles & in part for others :—*Held :* the trust continues till the option is exercised & cash payments made, & he commits a criminal breach of trust if he sells them without such payments.—KHITISH CHANDRA DEB ROY *v.* R. (1924), 1. L. R. 51 Calc. 736.—**IND.**

PART XXXIV. SECT. 1, SUB-SECT. 13.

sm. *Crop-payment lease—Lessee disposing of whole crop & appropriating proceeds—Not offence of theft.*]—R. *v.* HANDSHER, [1924] 1 D. L. R. 1194; 41 Can. Crim. Cas. 177; [1923] 2 W. W. R. 661.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 20.

10,121 i. For "R. *v.* McINTYRE (1898), 31 N. S. R. 422." read "R. *v.* McCAFFREY (1900), 33 N. S. R. 232."

10,123 xiii. — — — —.]—R. *v.* ANDREWS (N.B.) (1925), 44 Can. Crim. Cas. 201.—**CAN.**

10,123 xiv. — — — — —.]—R. *v.* WILSON (1924), 35 B. C. R. 64.—**CAN.**

10,315a. —— Question of fact for jury.]—(1) Where a deft. is charged with the fraudulent conversion of money the question whether he has been entrusted with the money or has received it for or on behalf of the persons specified in the indictment is a question of fact for the jury on which the judge must adequately direct them.

(2) Counts charging the fraudulent conversion on a certain date of a general deficiency are bad unless it is the duty of deft., on the date specified, to hand over the lump sum in his hands to the person who is entitled to it.—R. *v.* SHEAF (1925), 134 L. T. 127; 89 J. P. 207; 42 T. L. R. 57; 28 Cox, C. C. 86; 19 Cr. App. Rep. 46, C. C. A.

10,315b. —— ——.]—Whether a transaction is an "entrusting" within Larceny Act, 1916 (c. 50), s. 20 (1), or a loan, entitling the recipient of the property to use it, is a question of fact for the jury. R. *v.* SMITH, [1924] 2 K. B. 194; 93 L. J. K. B. 1000; 131 L. T. 28; 88 J. P. 108; 68 Sol. Jo. 37; 27 Cox, C. C. 619; 18 Cr. App. Rep. 76, C. C. A.

Annotation:—**Folld.** R. *v.* Sheaf (1925), 89 J. P. 207.

10,316. *Add. Annotation:*—**Refd.** R. *v.* Smith, [1924] 2 K. B. 194.

10,322. *Add. Annotation:*—**Dbtd.** R. *v.* Smith, [1924] 2 K. B. 194.

10,326a. Indictment—Necessary averments.]—R *v.* SHEAF, No. 10,315a, *ante*.

10,333. *Add. Annotation:*—**Refd.** R. *v.* Smith, [1924] 2 K. B. 194.

10,480. *Add. Annotation:* **Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

10,487a. Demand of money as alternative to inclusion in stop list - Protection of trade interests.] D., a servant & stop list superintendent of the Motor Trade Assocn., wrote a letter to R., a garage proprietor, stating that the assocn. offered an alternative to R. to inclusion in the stop list of the assocn. namely, the payment of a certain sum, & th publication of an undertaking to observ protected prices of motor cars, etc.:—*Held* D. was rightly convicted of uttering a lette demanding money with menaces contrary t Larceny Act, 1916 (c. 50), s. 29 (1), & it wa immaterial that his motive in writing th letter was the protection of a trade interest. R. *v.* DENYER, [1926] 2 K. B. 258; 9 L. J. K. B. 609; 134 L. T. 637; 42 T. L. R 452; 28 Cox, C. C. 153; 19 Cr. App. Rep 93, C. C. A.

10,725a. —— Finding must be by night.]—R. *v* HARRIS, No. 5478a, *ante*

10,731a. —— —— Possession must be by night.]—R. *v.* HARRIS, No. 5478a, *ante*.

10,752. *Add. Citation:* 68 Sol. Jo. 254.

10,754a. .] R. *v.* HYMAN (1926), 19 Cr App. Rep. 125, C. C. A.

10,754b. Or obtained Meaning.] "Ob tained" in Larceny Act, 1916 (c. 500, s. 33 means obtained physically. R. *v.* MISSEL R. *v.* RINGLE, R. *v.* ERRINGTON (1926), 1 Cr. App. Rep. 160, C. C. A.

10,779. *Add. Annotation:* **Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

10,878a. .] R. *v.* DAWSON (1926), 1 Cr. App. Rep. 128, C. C. A.

10,878b. .] The proper direction on a charge of receiving with guilty knowledge b that, if the jury are satisfied that deft.'s explanation is consistent with his innocence they ought to, not may, acquit, even if they do not accept the explanation given by a witness for the defence. R. *v.* KETTERING HAM (1926), 19 Cr. App. Rep. 150, C. C. A.

10,898. *Add. Annotation:* **Refd.** *Fadie v.* I. R Comrs., [1924] 2 K. B. 198

PART XXXIV. SECT. 3, SUB-SECT. 1.

10,314 ii. —— —.]—H. entered the offices of F., Ltd., in V., & in exchange for $1,000 received £23 in cash & a draft for £200 drawn on P. Bank, Ltd., London, reciting "pay from our credit balance to the order of H. £200," & signed F., Ltd. H. indorsed the draft "pay to the order of L. Bank, Ltd., for deposit to my credit." When H. presented the draft at L. Bank, Ltd., Liverpool, payment was refused. On a charge against F. under Criminal Code, s. 355, for converting the money to his own use & for failing to account for it, it was found by the trial judge that F., Ltd., was an *alias* for F. himself; that F. knew of the transaction carried out by his clerk; that F., Ltd., had no credit either at L. Bank, Liverpool, or at P. Bank, London, & they did not remit H.'s money to London as undertaken:—*Held*: on the facts stated the case did not come within sect. 355, & the conviction was set aside.—R. *v.* FAULDS (1922), 40 Can. Crim. Cas. 300; 31 B. C. R. 421.—**CAN.**

PART XXXIV. SECT. 3, SUB-SECT. 2.

10,327 iv. ——.]—To be guilty of theft under Criminal Code, s. 355, accused must have received money, valuable security, or other things on terms requiring him to hand over the thing received, or the proceeds thereof, to some person other than the person from whom he received it, & have fraudulently converted it to his own use.—R. *v.* Connors (1923), 51 N. B. R. 247.—**CAN.**

PART XXXIV. SECT. 3, SUB-SECT. 3.

10,334 v. ——.]—On the trial of a charge under Criminal Code, s. 357, the jury should be instructed to determine, leaving aside any directions which may be in evidence with respect to the disposition of the money alleged to have been misapplied, whether without such directions the relationship of debtor & creditor would exist between the parties, & that if it would the directions must have been in writing, & that, if it would not, oral directions would be sufficient to support the charge. R. *v.* SWAYZE, [1925] 1 D. L. R. 1015, [1925] 1 W. W. R. 656; 43 Can. Crim. Cas. 215.—**CAN.**

PART XXXIV. SECT. 8, SUB-SECT. 2.

10,459 i. —— *Letter addressed to non existent person.*]—Deft. was convicted of sending a threatening letter addressed to "Sir James W. Moir" at 40, Duke st., Halifax. There was no such person as "Sir James W. Moir," but 40 Duke St. was the business address of James W. Moir, by whom the letter was received:—*Held*: deft.'s appeal from the conviction failed.—R. *v.* VARNEY (1922), 57 N. S. R. 115. **CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 1.

e1. —— *Distinct from receiving goods knowingly stolen.*]—R. *v.* YAMAN, [1924] 2 D. L. R. 1116; 2 W. W. R. 452; 42 Can. Crim. Cas. 78; 33 B. C. R. 390.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 3. —B.

10,789 iii. ——.]—The mere finding of stolen property in the house where accused lived is not of itself sufficient to prove possession by him, where there are other inmates of the house. There must be control, exclusive or joint, as well. Especially is this the case where accused was only a casual inmate of the house & where the place where the property was found hidden was accessible, not only to the other inmates of the house, but to outsiders as well. R. *v.* PAWLETT, [1923] W. W. R. 1453; 40 Can. Crim. Cas. 312; 33 Man. L. R. 103.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 3 a1. .] While it is true that th present possession of stolen property raises a presumption of fact that, i not reasonably explained, the possesso is the thief, yet for the raising of such a presumption the exclusiveness of the possession or access is material.—R. *v* PAWLETT, [1923] 1 W. W. R. 1453; 4 Can. Crim. Cas. 312; 33 Man. L. R 103. **CAN.**

10,852 iv. .] R. *v.* AS SINEWA (N.B.) (1923), 41 Can. Crim Cas. 201. **CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 2 B.

11,001 ii. .]—Where a accused was found guilty of an offence under Criminal Act, 1916, s. 181 (a), for obtaining goods by false pretences:—*Held*, under the above sect. it was not necessary that the property in the goods obtained should pass to accused the passing of the property from the person defrauded being sufficient. R. *v.* O'SULLIVAN, [1925] V. L. R. 314; 47 A. L. T. 5, 31 Argus L. R. 263. **AUS.**

10,906a. ——,]—On the trial of an indictment for receiving with guilty knowledge, the jury must be clearly warned that the contents of a statement made by the thief before the trial are not evidence against deft., & if the former is called at the trial before he is sentenced, there must be a careful direction on his testimony.—R. v. BAGULEY (1925), 19 Cr. App. Rep. 54, C. C. A.

10,997. *Add. Annotation :*—**Reld.** Lake v. Simmons (1926), 95 L. J. K. B. 586.

11,011. *Add. Annotation :*—**Mentd.** Perlak Petroleum Maatschappij v. Deen, [1924] 1 K. B. 111.

11,069. *Add. Annotation :*—**Mentd.** Short v. Poole Corpn. (1925), 42 T. L. R. 107.

11,375. *Add. Citations :*—[1924] 1 K. B. 311; 93 L. J. K. B. 144; 130 L. T. 318; 27 Cox, C. C. 574; [1924] R. & C. R. 78.

11,467. *Add. Annotation :*—**Reld.** Shapiro v. La Morta (1923), 130 L. T. 622.

11,686. *Add. Annotation :*—**Reld.** British Broadcasting Co. v. Wireless League Gazette Publishing Co. (1926), 95 L. J. Ch. 272.

11,709. *Add. Annotation :*—**Reld.** Barnard v. Evans, [1925] 2 K. B. 794.

11,738. *Add. Annotation :*—**Reld.** Conn v. Turnbull (1925), 89 J. P. Jo. 300.

Part XXXV.—Forgery.

11,797. *Add. Annotation :*—**Reld.** McDonald v. Nash, [1924] A. C. 625.

11,834. *Add. Annotations :*—**Reld.** Goldman v. Cox (1924), 40 T. L. R. 423; Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775. **Mentd.** Australian Bank of Commerce v. Perel, [1926] A. C. 737; Jones v. Waring & Gillow, [1926] A. C. 670.

11,962. *Add. Annotation :*—**Reld.** R. v. FERGUSON (1845), 5 L. T. O. S. 458.

Part XXXVI.—Deceit by Fortune Telling, Witchcraft, Sleight of Hand, etc.

12,169a. —— ——.] — The offence under Vagrancy Act, 1824 (c. 83), s. 4, of professing to tell fortunes is complete without any allegation or proof that deft. did not believe in the possession of the powers claimed Merely to tell fortunes is an offence in itself, whatever the state of mind of deft.—STONEHOUSE v. MASSON, [1921] 2 K. B. 818; 91 L. J. K. B. 93; 125 L. T. 463; 85 J. P. 167; 37 T. L. R. 621; 10 L. G. R. 477; 27 Cox, C. C. 23, D. C.

Annotation :—**Folld.** Irwin v. Barker (1926), 69 Sol. Jo. 589.

12,169b. —— ——.]—It is not necessary to prove a deceitful purpose or fraudulent intent as a condition precedent to a conviction under Vagrancy Act, 1824 (c. 83), s. 4, of a person professing to tell fortunes.—IRWIN v. BARKER (1925), 69 Sol. Jo. 589, D. C.

PART XXXIV. SECT. 16, SUB-SECT. 2.—D.

m i. —— ——.]—Where a party is induced by false representation to part with possession of goods, but does not part with the right of property therein, there can be no conviction for obtaining goods under false pretences.—R. v. MCMANUS, [1924] 3 D. L. R. 207; 42 Can. Crim. Cas. 248; 51 N. B. R. 255.—CAN.

PART XXXIV. SECT. 21, SUB-SECT. 2.

11,383 i. *Who is a "creditor."*]—A person who sells goods, other than necessaries, to an infant, & who has no enforceable claim for the price, is not a "creditor" within Criminal Code, s. 417.—R. v. RASH (1923), 41 Can. Crim. Cas. 215; 53 O. L. R. 245.—CAN.

PART XXXIV. SECT. 26, SUB-SECT. 1.—B.

sn. *Intentional wrongful injury.*]—To constitute the crime of malicious injury to property, all that is necessary is an intentional wrongful injury to another's property. Upon proof of the wrongful intention the ct. will presume malice, though that presumption may be rebutted.—R. v. MASHARIGN, [1924] App. D. 11.—S. AF.

PART XXXIV. SECT. 26, SUB-SECT. 17.

11,699 ii. — —.]—The fact that a stray bull is castrated, in accordance with a local custom among stock breeders to protect pure-bred stock, is not a defence to a prosecution under Criminal Code, s. 519 (B) (b), for maiming or wounding the stray bull.—R. v. ENGLAND (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165; [1925] 1 W. W. R. 237.—CAN.

PART XXXIV. SECT. 26, SUB-SECT. 20.

11. ——.]—The form of conviction should state the amount of injury done, although it should adjudge the whole penalty, including the amount to be applied according to law.—R. v. KAUTZEL, [1924] 1 D. L. R. 621; 1 W. W. R. 342; 41 Can. Crim. Cas. 279; 20 Alta. L. R. 19.—CAN.

PART XXXV. SECT. 2, SUB-SECT. 2.

11,762 i. *Ante-dating.*]—The ante-dating of a document is not a forgery, unless it has or could have operated to the prejudice of any one.—R. v. GOBIND SINGH (1926), I. L. R. 5 Pat. 573.—IND.

CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL.

Part I.—Contempt of Court Generally.

3. *Add. Annotation :*—**Mentd.** Glasbrook v. Glamorgan County Council, [1025] A. C. 270.

Part III.—Jurisdiction to Commit or Fine for Contempt.

46. *Add. Citations :*—*sub nom.* R. v. BROWNELL, 1 Ad. & El. 508 ; 3 L. J. M. C. 118 ; 110 E. R. 1335.

Part IV.—Criminal Contempt.

167. *Add. Annotation :*—**Refd.** R. v. People, *Ex p.* Hobbs (1925), 69 Sol. Jo. 494.

179. *Add. Annotation :*—**Refd.** R. v. Evening Standard, *Ex p.* Public Prosecutions Director, R. v. Manchester Guardian, *Ex p.* Same, R. v. Daily Express, *Ex p.* Same (1924), 40 T. L. R. 833.

179a. **—— —— Results of investigations of private detectives.**]—When an accused person is under arrest on a criminal charge, it is contempt of ct. for the persons responsible for conducting a newspaper to employ amateur detectives for the purpose of investigating the facts of the alleged crime & to publish the results of that investigation.—R. v. EVENING STANDARD, *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, R. v. MANCHESTER GUARDIAN, *Ex p.* SAME, R. v. DAILY EXPRESS, *Ex p.* SAME (1924), 40 T. L. R. 833, D. C.

180a. **Charge to grand jury.**]—A charge to the grand jury delivered by the Recorder of London in a place to which the public & reporters are admitted is a public judicial proceeding in a ct. of justice, of which newspapers have a right to publish a fair & accurate report.

Consideration of the question whether or not a report published in a newspaper of a charge by the Recorder of London to the grand jury was a fair & accurate report & should be regarded as privileged.—R. v. EVENING NEWS, *Ex p.* HOBBS, [1925] 2 K. B. 158 ; 94 L. J. K. B. 511 ; 132 L. T. 767 ; 41 T. L. R. 291 ; 27 Cox, C. C. 704, D. C.

182a. **Publication of statement that money paid into court—Libel action against newspaper—Libel Act, 1845 (c. 75), s. 2.**]—(1) The amount of a payment into ct. by deft. under Libel Act, 1845 (c. 75), s. 2, amending Libel Act, 1843 (c. 96), s. 2, is not to be communicated to the jury, &, where money has been so paid in, it is contempt of ct. to publish before the trial a statement that a particular sum has been paid by deft. to pltf.'s solr., inasmuch as the publication of such a statement is calculated to prejudice the fair trial of the action.

(2) In such a case the proper procedure to be adopted by deft., who alleges that pending the trial of the action pltf. has been guilty of contempt of court, is not to apply for a rule *nisi* for attachment, but to proceed by notice of motion in the action.—R. v. WEALDSTONE NEWS & HARROW NEWS (EDITOR, PRINTER & PUBLISHER), HARLEY v. SHOLL (1925), 41 T. L. R. 508 ; 69 Sol. Jo. 642, D. C.

190. *Add. Annotations :*—*As to* (1) **Apld.** R. v. Wealdstone News & Harrow News, Harley v. Sholl (1925), 41 T. L. R. 508. **Refd.** R. v. Evening Standard, *Ex p.* Public Prosecutions Director, R. v. Manchester Guardian, *Ex p.* Same, R. v. Daily Express, *Ex p.* Same (1924), 40 R. L. R. 833 ; R. v. People, *Ex p.* Hobbs (1025), 69 Sol. Jo. 494.

PART IV. SECT. 1.

97 iv. —— ——.]—The phrase "contempt of ct." does not in the least describe the true nature of the class of offence committed, viz., interfering with the administration of the law in impeding & preventing the course of justice. Imprisonment for breach of interdict being in vindication of public law, it must not be assumed that an order for release will follow upon an apology & promise of obedience to the orders of the ct., even though such apology is accompanied by a statement on behalf of complainer that he no longer requires the protection which the original interdict gave him.—JOHNSTON v. GRANT, [1923] S. C. 789.—SCOT.

PART IV. SECT. 2, SUB-SECT. 1.

sp. Sending letter to judge containing offensive references to judgment.]—*Re* MILLER (1921), 54 N. S. R. 529.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.

166 ii. ——.]—A newspaper in the course of an article called a judge "sycophantic," & accused him of having decided a case not according to the dictates of justice but in order to please others :—*Held :* (1) the publication of an article referring to a case which had been decided might amount to contempt ; (2) an article scandalising a ct. or judge was a contempt of ct.—R. v. HAYYAD HABIB (1925), I. L. R. 6 Lah. 529.—IND.

PART IV. SECT. 3, SUB-SECT. 3.—A. (a).

170 i. —— *No proceedings pending.*]—Applt. was fined for contempt in respect of matter published by him :—*Held :* (1) there being no attack on any ct. or its members, there could be no contempt of ct. in respect of anything tending to obstruct the course of justice in the absence of any pending proceedings to which the published matter could apply ; (2) there was nothing in the published matter which was calculated to prejudice the course of justice ; (3) the order must be set aside.—PORTER v. R., *Ex p.* CHIN MAN YEE (1926), 37 C. L. R. 433.—AUS.

PART IV. SECT. 3, SUB-SECT. 2.—A. (d) iv.

sp. General rule.]—A newspaper may not, in the guise of reporting public judicial proceedings, indicate the writer's own opinion of the demeanour of a witness & so comment on that demeanour.—A.-G. v. HAMILTON, [1925] N. Z. L. R. 869.—N.Z.

Part V.—Contempt in Procedure.

459. *Add. Annotations :*— **Mentd.** The Volant (1842), 1 Wm. Rob. 383 ; The Mary Caroline (1848), 6 Notes of Cases, 536 ; The Mellona (1848), 3 Wm. Rob. 16 ; The Benares (1850), 14 Jur. 581 ; The Milan (1861), 5 L. T. 590 ; R. *v.* City of London Court Judge, [1892] 1 Q. B. 273 ; The Dictator, [1892] P. 304.

Part VI.—Attachment and Committal.

487. *Add. Annotation :*—**Mentd.** R. *v.* Woolwich B. C., *Ex p.* Woolwich Gdns. (1922), 128 L. T. 374.

599. *Add. Annotation :* **Mentd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch.

698. *Citations :* For "3 Bing. 223 ; 11 Moore, C. P. 55 ; 4 L. J. O. S. C. P. 57 ; 130 E. R. 498" read "3 Bing. 223 ; 130 E. R. 498 ; *sub nom.* THORPE *v.* GISBOURNE, 11 Moore, C. P. 55 ; 4 L. J. O. S. C. P. 57."

709. *Add. Annotation :* **Folld.** R. *v.* Wealdstone News & Harrow News, Harley *v.* Sholl (1925), 41 T. L. R. 508.

709a. ——.]—R. *v.* WEALDSTONE NEWS & HARROW NEWS (EDITOR, PRINTER & PUBLISHER), HARLEY *v.* SHOLL, No. 182a, *ante*.

710. *Add. Annotation :*—*As to* (1) **Refd.** Shrager *v.* Dighton, [1924] 1 K. B. 274.

750. *Add. Annotations :*—**Mentd.** *Re* Wingfield & Blew, [1904] 2 Ch. 665 ; Russell *v.* Russell, [1924] A. C. 687 ; Warren *v.* Warren, [1925] P. 107.

894. *Add. Annotation :*—*As to* (1) **Refd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

948. *Add. Annotation :*—**Mentd.** Pitchers *v.* Surrey County Council, [1923] 2 K. B. 57.

Part VII.—Position of Party in Contempt.

1128. *Add. Annotations : Generally,* **Mentd.** Evans *v.* Evans & Blyth (1904), 20 T. L. R. 612 ; *Re* Wigand, R. *v.* Wigand (1913), 82 L. J. K. B. 735 ; Russell *v.* Russell, [1924] A. C. 687 ; Warren *v.* Warren, [1925] P. 107.

PART V. SECT. 1, SUB-SECT. 1.—B. (a).

81. *Direction of court to commit . . to obey order.*] Where a . . be said to have . . ed to comply with an order . . : *Held :* he was not guilty of contempt. R. *v.* ORTY, *Ex p.* ROBERTS, R. *v.* WHITE, *Ex p.* ROBERTS (1922), 50 N. B. R. 401, 411. — CAN.

PART V. SECT. 2, SUB-SECT. 3.—K.

sw. *To hand over papers . By one subject to condition.*] A solr. ordered by the ct. to hand over . . to another . . *Held :* guilty of . . An offer was . . to hand over . . ct to certain spe . . *Held :* a refusal of this offer . . just . . & Co., *Ex p.* HASSELL, (1924) . . L. R. 49. — CAN.

PART VI. SECT. 5, SUB-SECT. 3. B. (a) ii.

874 i. *General rule . Notice suffici . . by a prohibitory . . aware without pe . . of the . . e of the order & nevertheless . . is a fault, he is just as liable to . . as if he had been per . . rved.* ELLIOTT *v.* APPLETON (192 . . Tas. L. R. 20.— **AUS.**

PART VI. SECT. 6, SUB-SECT. 4.

82. *Direction . . be to clerk of Si . . Writ to be entitled in S . . Court.*]—*Re* PROUGHT AREA ACT, SNOWDEN *v.* BAKER, W. W. R. 1002.—**CAN.**

COURTS.

Part I.—What is a Court.

5. *Add. Annotation :*—**Refd.** R. v. Bath Compensation Authority, [1925] 1 K. B. 685.

6. *Add. Annotation :* —**Refd.** Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586.

9. *Add. Annotation :*—**Refd.** Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586.

10. *Add. Annotations :* **Consd.** R. v. Bath Compensation Authority, [1925] 1 K. B. **Refd.** R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171

Part IV.—Jurisdiction.

22. *Add. Annotation :*—**Mentd.** Sassoon v. Graham & Oriental Navigation Co. (1925), 133 L. T. 805.

23. *Add. Annotation :—Generally.* **Mentd.** St. Magnus Parochial Church Council, etc. v. London Diocese Chancellor, [1923] P. 38.

24. *Add. Annotation :*—**Mentd.** Pryce v. Pioneer Press (1925), 42 T. L. R. 29.

25. *Add. Annotation :* **Consd.** Sassoon v. Graham & Oriental Navigation Co. (1925), 133 L. T. 805.

30. **Refd.** A.-G. for Alberta v. Cook, [1926] A. C. 444.

35. *Add. Annotations :*—**Refd.** Duff Development Co. v. Kelantan Government, [1923] 1 Ch. Mercantil Argentina v. Shipping Board (1924), 93 L. J. K. B. 816; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

37. *Add. Annotation :* **Consd.** The Fagernes,

37a. —— **Waters within fauces terrae.**] — Defts., an Italian co., moved to set aside an for service of notice of a writ *in r* upon them in Italy, in respect of a c between their vessel, which sank, & pltfs.' vessel in the Bristol Channel some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast according to the respective cases:—*Held :* the waters of the Bristol Channel, at any rate above a line drawn from Bull Point in Devonshire to Port Eynon Head in Glamorganshire, are within the *fauces terræ* & within the bodies of the above-mentioned counties respectively, &, therefore, within the jurisdiction of the High Ct., & the order for service of notice of the writ out of the jurisdiction was rightly

38. *Add. Annotation :* As to (1) **Consd.** The Fagernes, [1926] P. 185.

74. *Add. Annotation :* **Refd.** Owl Mill Co. (1920) v. Croft, Elliott v. Duchess Mill (1926), 95 L. J. K. B. 835.

147. *Add. Annotations :* **Refd.** Everett v. Griffiths, [1924] 1 K. B. 941; Whitney v. I. R. Comrs. (1925), 42 T. L. R. 58. **Mentd.** Boston Corpn. v. Fenwick (1923), 129 L. T. 765; Sheppy Glue & Chemical Works v. Medway River Conservators (1926), 24 L. G. R. 457; Whitney v. I. R. Comrs., [1926] A. C. 37.

149. *Add. Annotations :* **Apld.** Hallen v. S [1923] A. C. 684. **Consd.** Cayen v. Ca Pacific Ry. (1925), 133 L. T. 774; **Apld.** Cayzer, Irvine v. Board of Trade, [1927] 1 K. B. 269.

150. *Add. Citations :* 15 Asp. M. L. C. 566; *affg.* S. C. *sub nom.* Dreyfus & Co. v. Atlantic Shipping & Trading Co. (1921), 37 T. L. R. 417, C. A.

Add. Annotations : As to (1) **Consd.** Ford v. Compagnie Furness (France), [1922] 2 K. B. 797. **Refd.** Pinnock v. Lewis & Peat, [1923] 1 K. B. 690. *Generally*, **Mentd.** The Christel Vinnen, [1924] P. 61.

157. *Add. Annotation :* **Mentd.** Graham v. Graham, [1923] P. 31.

170. *Add. Annotations :*—**Refd.** St. Magnus Parochial Church Council, etc. v. London Diocese Chancellor, [1923] P. 38; Hunter v. Städtische Hochseefischerei Gemeinnützige Gesellschaft (1925), 133 L. T. 488.

172. *Add. Annotation :*—**Refd.** Duff Development Co. v. Kelantan Government, [1924] A. C.

185. *Add. Annotation :* **Folld.** Pringle v. [1925] 1 K. B. 573.

199. *Add. Annotation :* **Refd.** Hunter v. Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493.

PART I.

ss. *Not income tax board of*
A
1923, s. 41, not a High Ct. or a federal ct.— OIL Co., LTD. v. FED OF TAXATION L. J. P. 422; 31 Argus L. R. —AUS.
sb. *of*
under Medical R. S. S., 1920 (c. 135), s. —HUNT v. COLLEGE OF Act. ct. E
OF SA
4 D. L. R. 834; [1925] 3 W. W. R. 758.—CAN.

PART IV. SECT. 3, SUB-SECT. 2.

46 vii a. ——) — DEPUTY FEDERAL COMR. OF TAXATION FOR TASMANIA v. THOMAS (1924), C. L. R. 299.—AUS.
46 vii b. ——) — Jurisdiction of a coun a non-resident of division in which the entered cannot of action
ss. 1923) 4 L. W. W. R. 54 Inn. L. R. 235.—CAN.
L.) A ict ct. Judge
an suit of a
MUTUAL HAIL INSURANCE CO. v. FOSTER, [1925] 3 D. L. R. 746; [1925] 2 W. W. R. 515, 19 Sask. L. R. 387.—CAN.

Part VI.—Right of Public to Admission.

277a. ——.]—In cross suits for divorce the case for the wife having been opened in public & the wife on being called as a witness finding it almost impossible to give her evidence by reason of the presence of people in ct., the President directed this part of the case to be heard *in camerâ*.—MOOSBRUGGER *v.* MOOSBRUGGER, MOOSBRUGGER *v.* MOOSBRUGGER & MARTIN (1913), 29 T. L. R. 658.

Part VII.—Classification of Courts.

292. *Add. Annotation* :—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

293. *Add. Annotation* :—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

Part X.—The Judicial Committee of the Privy Council.

329. *Add. Annotation* :- **Reld.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

349. *Add. Annotation* :—*Generally*, **Mentd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

350. *Add. Annotation* :—**Reld.** Ware *v.* Whitlock, [1923] 2 K. B. 418.

352a. **Affidavit of service of notice of intended application—Necessity for lodging—Judicial Committee Rules, 1925, r. 4.]**—PRACTICE NOTE, [1925] W. N. 164, P. C.

363. *Add. Annotation* :—**Mentd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

373. *Add. Citations* :—*sub nom. Ex p.* KENSINGTON, 15 Moo. P. C. C. 209; 15 E. R. 473.

388a. ——. **When further security ordered.**]—CORPORATION AGENCIES, LTD. *v.* HOME BANK OF CANADA, [1926] W. N. 58, P. C.

403a. ——.]—In a suit claiming property by adoption, one of defts. denied the alleged adoption & claimed widow's maintenance. The first ct. found for the alleged adoption but decreed maintenance at a sum less than that claimed. The appellate ct. varied the decree by increasing the amount of maintenance, & refused leave to appeal :—*Held* : special leave to appeal should be granted limited to the question of the maintenance allowance. — ANNAPURNABAI *v.* RUPRAO (1924), L. R. 51 Ind. App. 319, P. C.

483a. **Form of case—Necessity for signature of one of counsel appearing at hearing.**]—MONTREAL LIGHT, HEAT & POWER CO. *v.* MONTREAL (CITY) (1924), 68 Sol. Jo. 419, P. C.

486. *Add. Annotation* :—**Consd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

535a. ——.]—It is no part of the functions of the Judicial Committee, generally speaking, to interpret an Order in Council unless it be brought before them in the ordinary way of appeal. In the present case, however, in which a suit had been remitted to the High Ct. to assess damages & that ct. had adjourned an appeal in order that the parties

PART VII. SECT. 3, SUB-SECT. 1.

ss. *Board of Valuation & Revision —Under Winnipeg Charter, s. 341.*]—*Re* WINNIPEG CHARTER, *Re* COMMUNITY OF SISTERS OF THE HOLY NAMES OF JESUS & MARY, [1922] 2 W. W. R. 253; 65 D. L. R. 606.—CAN.

PART X. SECT. 2, SUB-SECT. 2.

346 ii. ——.]—A question of procedure is not one upon which an appeal to the Privy Council will be entertained.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011; 94 L. J. P. C. 21; 132 L. T. 310; 40 T. L. R. 814.—CAN.

PART X. SECT. 3, SUB-SECT. 1.—A. (c).

vi. *Time occupied in prosecuting application for review—Addition to prescribed period.*]—Applt. allowed to add the time occupied by the prosecution in good faith of an application for review to the period prescribed for presenting a petition for leave to appeal.—NANIBAI RUSTOMJI MEHTA *v.* HASHAM ISMAYAL VALAD HAJI KHAMISA (1924), I. L. R. 49 Bom. 149. —IND.

PART X. SECT. 3, SUB-SECT. 1.—C.

370 iia. —— ——.]—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1924] 2 D. L. R. 1236; 54 O. L. R. 629.—CAN.

380 i. —— *Form of security.*]—An order to furnish security for costs of resp. in an appeal to the Privy Council in a form other than cash or Govt. Bonds can be made only at the time of granting the certificate & not afterwards.—ARUNACHALA NAIDU *v.* BALAKRISHNA & Co. (1924), I. L. R. 48 Mad. 559.—IND.

PART X. SECT. 3, SUB-SECT. 5.

387 i. *When allowed—Suits involving same question.*]—Actions brought by pltf. against three cos. were based on separate contracts, precisely similar in form. On an appeal to the Privy Council, application was made to the Ct. of Appeal (B.C.) to consolidate the appeals. Application refused.—VAN HEMELRYCK *v.* NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO. (No. 2) (1920), 29 B. C. R. 60.—CAN.

PART X. SECT. 3, SUB-SECT. 9.—A.

437 iv. ——.]—The operation of a judgment restraining defts. from selling certain goods under certain trade names is not stayed pending an appeal of defts., to the Privy Council, although under Privy Council Appeals Act, 1914, ss. 3, 4, upon the perfecting of security by defts., execution shall be stayed in the original cause.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO. (1924), 55 O. L. R. 127.—CAN.

PART X. SECT. 3, SUB-SECT. 10.—B.

ss. *Documents not produced at trial.*]—The Judicial Committee has unrestricted power to admit documents where sufficient ground is shown for their not having been produced at the initial stage of the litigation.—JUMNA-JIT PRATAP SAHI *v.* ALLAN (1923), L. R. 50 Ind. App. 185.—IND.

might apply to the Board to ascertain the intention & effect of the Order made, their Lordships entertained a petition by resp. with that object, though upon the facts the declaration prayed for was refused with costs.—HURNANDRAI FULCHAND v. PRAGDAS BUDHSEN, *Ex p.* PRAGDAS BUDHSEN (1924), L. R. 52 Ind. App. 118.

585a. ——.]—A Chinese resident in Penang executed a deed settling a fund upon his "sons & grandsons" equally. Applt. having claimed that his father, T., was a "son" of the settlor entitled to share in the gift, an inquiry whether T. was legitimate, as being a son by a "t'sip," or secondary wife, was remitted for rehearing, applt. not having had an opportunity of adducing certain evidence upon which he relied, & because the view of the lower ct. that a Christian woman could not be a "t'sip" required reconsideration, seeing that no ceremony was needed to constitute that status. Further consideration was also needed of the possible jural conceptions: (a) that a child might be legitimate, although its parents were not, & could not be, legitimately married; & (b) that a father might legitimatise his natural child by a mother free to contract a legitimate union.—KHOO HOOI LEONG v. KHOO HEAN KWEE, [1926] A. C. 529; 95 L. J. P. C. 94; 135 L. T. 170, P. C.

609. *Add. Citation*:—128 L. T. 10.

651. *Add. Annotation*:—**Mentd.** Gabriel v. Eliatamby, [1926] A. C. 183.

690a. *Add. Annotation*:—**Mentd.** Rhondda's Petition (1922), 92 L. J. P. C. 81.

763. *Add. Annotation*:—**Mentd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

Part XI.—The Supreme Court of Judicature.

775. In the cross-reference before this case for "Judicature Acts, 1873 (c. 66) to 1902 (c. 31)" read "Judicature (Consolidation) Act, 1925 (c. 49)."

788. *Add. Annotation*:—**Mentd.** Public Trustee v. Elder, [1926] Ch. 776.

790. *Add. Annotation*:—**Reld.** The Fagernes, [1926] P. 185.

792. *Add. Annotations*:—**Mentd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76; Rawlinson v. Ames (1924), 69 Sol. Jo. 142.

793. *Add. Annotations*:—**Mentd.** Clarkson v. Davies, [1923] A. C. 100; Duffner v. Bowyer (1924), 40 T. L. R. 700; The Kourak, [1924] P. 140; *Re* Pennington & Owen, [1925] Ch. 825; Bennett v. Whitehead, [1926] 2 K. B. 380; Firm of R. M. K. R. M. v. Firm of M. R. M. V. L., [1926] A. C. 701; Pirie v. Richardson (1926), 70 Sol. Jo. 1023.

809. *Add. Annotation*:—**Reld.** Rackham v. Tabrum (1923), 129 L. T. 24.

913. *Add. Annotation*:—**Mentd.** Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.

919. *Add. Citation*:—*sub nom.* R. v. ILLINGWORTH, 32 W. R. 451.
After this case add "*See, now*, Judicature (Consolidation) Act, 1925 (c. 49), s. 25."

944. *Add. Annotations*:—**Reld.** Davey v. Robinson, [1923] 1 K. B. 563; Shrager v. Dighton, [1924] 1 K. B. 274. **Mentd.** Hunter v. Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493; Pringle v. Hales, [1925] 1 K. B. 573.

Part XVI.—Consular Courts.

951. *Add. Annotation*:—**Mentd.** Nadan v. R., [1926] A. C. 482.

954. *Add. Annotations*:—**Reld.** Rudd v. Rudd, [1924] P. 72; Bartlett v. Bartlett, [1925] A. C. 377. **Mentd.** *Re* Annesley, Davidson v. Annesley, [1926] Ch. 692.

956a. —— —— **To make declaration as to validity of divorce—Granted on grounds not authorised by English law.**]—Resp. & his wife, applt., who were British subjects of the Jewish religion & resident in Egypt, were divorced by the Grand Rabbinat at Alexandria in the subject to be decided concerned the diversified & complicated law of India as to tenure of land.—SECRETARY OF STATE FOR INDIA IN COUNCIL v. RAJA JYOTI PRASHAD SINGH (1926), 53 L. R. Ind. App. 100.—IND.

in the appeal before the Privy Council were dead, & their legal representative had not been brought on the record when the appeal was heard & judgment delivered by the Privy Council:—*Held*: the decree against them was not a nullity under Judicial Committee Act, 1833, s. 23.—KALYANI PILLAI v. THIRUVENKADASWAMI AYYANGAR (1924), I. L. R. 47 Mad. 618.—IND.

PART X. SECT. 3, SUB-SECT. 10.—C. (b).

536 v. ——.]—The Privy Council will only deal with the original issues raised at the trial, & cannot consider new pleadings & the issues raised therein.—BROWN v. MOORE, [1924] 2 D. L. R. 545; *affg.* 59 D. L. R. 14; 55 N. S. R. 460.—CAN.

536 vi. ——.]—A new contention, which involves an amendment of the plaint, cannot be entertained.—GAJADHUR MARTON v. AMBIKA PRASAD TIWARI (1925), I. L. R. 47 All. 459.—IND.

536 vii. ——.]—The Privy Council declined to entertain an argument which had not been presented to, or sifted by, the cts. in India, especially

PART X. SECT. 3, SUB-SECT. 10.—D. (5) ii.

650 vi. ——.]—Where all the cts. below have concurred in the findings of fact, the Judicial Committee will ordinarily accept them & not review them.—LAING v. TORONTO GENERAL TRUSTS CORPN., [1924] 4 D. L. R. 1138.—CAN.

PART X. SECT. 3, SUB-SECT. 11.

11 i. —— *Against legal representatives of respondents.*]—Where some of resps.

PART X. SECT. 3, SUB-SECT. 12.—A. (a) i.

712 ii. —— *Not appearing but lodging case.*]—Resps., who did not appear, but had lodged a case, allowed costs up to the date of doing so.—GAJADHUR MARTON v. AMBIKA PRASAD TIWARI (1925), I. L. R. 47 All. 459.—IND.

accordance with the Jewish religion, but upon grounds which would not have supported a decree for divorce according to English law. Applt. brought an action against resp. in the Supreme Ct for Egypt for a declaration that the divorce was effectual to dissolve the marriage. The Order in Council of 1910, by which civil jurisidiction over British subjects was conferred, provided by art. 90 that "in all matters relating to marriage, inheritance, or other questions involving religious law or custom the ct. shall, in the case of persons belonging to non-Christian communities, recognise & apply the religious law or custom of the persons concerned." Art. 103 conferred "all such jurisdiction in matrimonial causes, except the jurisdiction relative to dissolution or nullity or jactitation of marriage, as for the time being belongs to the High Ct. in England":—*Held:* applt. was entitled to the declaratory decree which she sought.—SASSON *v.* SASSON, [1924] A. C. 1007; 94 L. J. P. C. 13; 132 L. T. 163, P. C.

Relation: **Reld.** Bartlett *v.* Bartlett, [1925] A. C. 377.

956b. — — — — — **To try action for damages for breach of contract—Breach in England.**]—By the Ottoman Order, 1910, the jurisdiction of the Supreme Ct. thereby established extends, as regards Egypt, to, so far as material: "(i) British subjects, as herein defined, within the limits of this Order. (ii) The property & all personal & proprietary rights & liabilities within the said limits of British subjects, whether the said subjects are within the said limits or not." Rules of ct. made under the order contain a provision for substituted service, but none for service out of the jurisdiction. Applt., a British subject resident in England, contracted in England to buy from resp., who was resident in Egypt, a concession granted by the Egyptian Govt. in connection with irrigation, & for the employment of resp. in Egypt. Applt. repudiated the contracts by a cable despatched from England. Resp. issued a writ in the Supreme Ct. for Egypt claiming damages from applt. for breach of the contracts, & obtained an order for substituted service in Egypt:—*Held:* the cable repudiating the contracts having been despatched in England, the breach took place there, & the Supreme Ct. had no jurisdiction in the case.—MARTIN *v.* STOUT, [1925] A. C. 359; 94 L. J. P. C. 71; 132 L. T. 673; 41 T. L. R. 176, P. C.

969a. —— **Transfer of jurisdiction—Effect of Treaty of Peace (Turkey) Act, 1924 (c. 7).**]—Petitioner, the wife of a British subject domiciled in Turkey, obtained in His Britannic Majesty's Supreme Ct. for the Dominions of the Sublime Porte (Matrimonial Jurisdiction) a decree *nisi* for a divorce on the ground of her husband's adultery. In consequence of the ratification of the Treaty of Lausanne the above ct. ceased to exist before the decree was made absolute:—*Held:* by virtue of the combined effect of the above Act, art. 16 of the Convention between Turkey & Great Britain of the same date as the Treaty, & art. 2 of the Treaty of Peace (Turkey) Order, 1924, the Divorce Division of the High Ct. had jurisdiction to make the decree absolute.—SEAGER *v.* SEAGER, [1925] P. 105; 94 L. J. P. 133 L. T. 319; 69 Sol. Jo. 724.

Part XXIII.—Borough and Local Courts of Record.

1019. *Add. Annotation:* **Mentd.** Debenhams *v.* Perkins (1925), 133 L. T. 252.

1053. To the reference before this case add "; Liverpool Corporation Act, 1921 (c. lxxiv),

CROWN PRACTICE.

Part I.—Proceedings on the Revenue Side of the King's Bench Division.

46a. Bail to answer & pay penalties—Liability of sureties.]—Where a person is proceeded against in the High Ct. by writ of *capias*, under Customs Consolidation Act, 1876 (c. 36), s. 247, for the recovery of penalties for offences against the Customs Acts he shall be bound to answer & pay all the penalties sued for with two or more sureties who shall be jointly & severally sufficient for the amount of the bail indorsed on the writ.—*Re* ATTFIELD (1924), 93 L. J. K. B. 1064.

166. *Add. Annotation* :—**Refd.** Food Controller v. Cork (1923), 130 L. T. 1.

313. *Add. Annotation* :—**Refd.** *Re* Kent Coal Concessions, Burn v. The Co., [1923] W. N. 328.

Part II.—Petition of Right.

320. *Add. Annotation* :—**Refd.** Badman v. R., [1924] 1 K. B. 64.

322. *Add. Annotation* :—**Refd.** Rowland v. Air Council (1923), 39 T. L. R. 228.

323a. Claim against Dominion.]—A petition of right cannot be brought in the High Ct. of Justice of England which has for its object a judgment against the Crown, which is to be satisfied out of the Exchequer of a Dominion.—A.-G. *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND, [1925] A. C. 754; 94 L. J. K. B. 772; 133 L. T. 568; 41 T. L. R. 576; 69 Sol. Jo. 744, H. L.; *revsg.* S. C. *sub nom.* Great Southern & Western Ry. Co. of Ireland v. R., [1924] 2 K. B. 450, C. A.

333. *Add. Annotation* : **Refd.** A.-G. for Ontario v. McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

347. *Add. Citation* :—15 Asp. M. L. C. 574.

Add. Annotation : **Refd.** Brocklebank v. R., [1925] 1 K. B. 52.

351. *Add. Annotation* :—**Distd.** A.-G. for Straits Settlements v. Pang Ah Yew, [1925] A. C. 555.

352. *Add. Annotations* : *As to* (1) **Distd.** A.-G. for Straits Settlements *v.* Pang Ah Yew, [1925] A. C. 555. **Refd.** Jamieson v. Downie, [1923] A. C. 601; Badman v. R., [1924] 1 K. B. 64.

353a. —— Compensation for injury to property in Ireland.]—No claim for compensation for injuries done to property in Ireland is maintainable against the Crown in an English ct.—PRICE v. R. (1925), 42 T. L. R. 179.

355. After this case add "—— **Effect of Indemnity Act, 1920 (c. 48).**]—*See* CONSTITUTIONAL LAW, pp. 280, 281, Nos. 526a-526c, 534a, *ante*."

356. *Add. Annotation* : **Folld.** A.-G. for Straits Settlements v. Pang Ah Yew, [1925] A. C. 555.

356a. ——.]—Under Crown Suits Ordinance No. 22 of the Straits Settlements a petition of right can be maintained to recover damages arising from a collector of land revenue selling land under Ordinance No. 35 for arrears of revenue without first serving a written notice of demand as required by s. 4. The collector in selling is an agent of the Crown although he acts under statutory authority, & the fact that he has carried out his duties in an unauthorised manner does not prevent the Crown from being liable.—A.-G. FOR STRAITS SETTLEMENTS v. PANG AH YEW, [1925] A. C. 555; 94 L. J. P. C. 150; 133 L. T. 106, P. C.

368. *Add. Annotations* :—**Consd.** Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271. **Refd.** Netherlands-American Steam Navigation Co. v. Procurator-General (1925), 42 T. L. R. 81.

370. *Add. Annotation* : **Mentd.** Cayzer, Irvine v. Board of Trade (1925), 95 L. J. K. B. 131.

374. *Add. Annotation* :—**Apld.** Badman v. R., [1924] 1 K. B. 64.

374a. —— When allowed.]—Under Petitions of Right Act, 1860 (c. 34), s. 7, the ct. has jurisdiction to allow a petition of right to be amended, provided the amendment does not involve a substantial alteration in the cause of action, so that the allowance of it without

PART I. SECT. 1. SUB-SECT. 4.—B. (h).

sl. *Exchequer Court—No jurisdiction to hear appeal from Commissioner's Court under Canada Shipping Act.*]—R. v. PERREAULT (1922), 66 D. L. R. 671; 21 Exch. C. R. 355.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

sk. *Effect of writ—On accrual of prerogative rights.*]—Prerogative rights which might accrue to the Crown by virtue of a writ of extent are dependent upon the issue of the writ itself. As it was too late to issue the writ *Held*: there was no direct liability to the Crown by the insolvent co. *Re* EXCELSIOR ELECTRIC DAIRY MACHINERY, LTD., [1923] 3 D. L. R. 1176; 52 O. L. R. 325; 2 C. B. R. 596.—**CAN.**

PART II. SECT. 2. SUB-SECT. 1.

o 1. — *Not where property in possession of third party.*]—MCLEAN GOLD MINES, LTD. v. A.-G. FOR ONTARIO, [1926] 1 D. L. R. 11.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—A.

346 ii. ——.]—MAYNEILL v. R., [1925] Exch. C. R. 133.—**CAN.**

PART II. SECT. 3.

374a i. — *May be amended by court. When allowed.*]—Where a suppliant seeks to substitute or add a substantially new cause of action, the amendment should not be allowed in the absence of the Lieutenant-Governor's fiat or the consent of the A.-G.; but if the substance of the case is not changed, the ct. may help the suppliant by amendment.—NORTHERN CONSTRUCTION CO. v. R., [1923] 3 D. L. R. 1069; 2 W. W. R. 739.—**CAN.**

374a ii. ——.]—Even if the ct. has power in some cases to

a fresh fiat would operate in derogation of the prerogative of the Crown. The test whether a particular amendment ought to be allowed is this: if the petition had originally been presented in the form in which it stands after amendment, is there a reasonable probability that the fiat would not have been refused?—BADMAN BROTHERS *v.* R., [1924] 1 K. B. 64; 93 L. J. K. B. 132; 130 L. T. 264; 68 Sol. Jo. 166, C. A.

381. *Add. Annotations:—As to* (1) **Reld.** Jamieson *v.* Downie, [1923] A. C. 691. *As to* (3) **Apprvd.** Badman *v.* R., [1924] 1 K. B. 64.

388. *Add. Annotation:—As to* (1) **Reld.** Cayzer, Irvine *v.* Board of Trade (1925), 95 L. J. K. B. 134.

Part III.—Scire Facias.

441. *Add. Annotations:*—**Mentd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33; Parker & Cooper *v.* Reading, [1926] Ch. 975; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 42 T. L. R. 401.

449. *Add. Annotation:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

Part V.—Habeas Corpus.

464. *Add. Annotation:*—**Reld.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

469. *Add. Annotations:—As to* (1) **Distd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603. *As to* (4) **Reld.** R. *v.* Maidstone Prison, *Ex p.* Maguire, [1925] 2 K. B. 265.

470. *Add. Citations:*—[1923] 2 K. B. 361; 92 L. J. K. B. 707; 129 L. T. 419; 87 J. P. 166; 21 L. G. R. 419; 27 Cox, C. C. 433; *sub nom.* O'BRIEN *v.* SECRETARY OF STATE FOR HOME AFFAIRS, 67 Sol. Jo. 553; *on appeal, sub nom.* SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603, H. L.

491. *Add. Annotation:*—**Mentd.** R. *v.* Secretary of State for Home Affairs, *Ex p.* O'Brien, [1923] 2 K. B. 361

492. *Add. Annotation:*—**Reld.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

493. *Add. Annotation:—As to* (1) **Consd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

498. *Add. Annotation:*—**Reld.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 380.

553. *Add. Annotation:*—**Reld.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

554. *Add. Annotations:*—**Consd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127. **Reld.** R. *v.* Brixton Prison, *Ex p.* Perry, [1924] 1 K. B. 455.

570. *Add. Annotation:*—**Mentd.** Everett *v.* Ryder (1926), 135 L. T. 302.

585a. —— **Form of summons.**]—A summons taken out during the long vacation with a view to obtaining a writ of *habeas corpus* to bring the body of appct. before the High Ct. should require the parties concerned to show cause, not why the writ should not issue, but why an order *nisi* for the writ should not issue, inasmuch as the former procedure does not, whereas the latter does, disclose the grounds upon which the application is made.—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SHURE, [1926] 1 K. B. 127; 95 L. J. K. B. 361; 134 L. T. 317; 28 Cox, C. C. 120; [1926] B. & C. R. 1, D. C.

601. *Citations:*—For "*sub nom.* R. *v.* HOME SECRETARY, *Ex p.* O'BRIEN, 39 T. L. R. 487, C. A.; *sub nom.* HOME SECRETARY *v.* O'BRIEN, *Times*, May 15, H. L.," read "*sub nom.* R. *v.* SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* O'BRIEN, [1923] 2 K. B. 361, C. A.; *sub nom.* SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603, H. L."

amend a petition without the consent of the Crown, that power must be limited to minor matters, & cannot go the length of allowing a suppliant to change the character of his claim against the Crown, either by adding to it or withdrawing part of it or by adding parties as co-defts. with the Crown.—FLEXIUM SIGN CO. *v.* MACKY SIGN CO., [1923] 1 D. L. R. 1185; 51 O. L. R. 595.—**CAN.**

374a iii. ——— ——— ———.]—A petition cannot be amended, unless one month's notice of the substance of the petition is given to a law officer.—OFFICIAL ASSIGNEE *v.* R., [1922] N. Z. L. R. 265.—**N.Z.**

374a iv. ——— ——— ———.]—FITZPATRICK *v.* R. (1925), 37 O. L. R. 178.—**CAN.**

g i. ——— *Defence—Where particulars ordered.*]—O'BRIEN & DOHERTY *v.* R., [1925] Exch. C. R. 1.—**CAN.**

si. *Claim against individual as well as Crown—Necessity for separate action against individual—Action & petition of right tried together.*]—NORTHERN CONSTRUCTION CO. *v.* R., [1923] 3 D. L. R. 1069; 2 W. W. R. 759.—**CAN.**

393 i. *Discovery—Suppliant's right as against Crown.*]—In proceedings by petition of right against the Crown, an order will not be made for the examination by petitioner of an officer of the Crown for discovery before trial.—CROMBIE *v.* R., [1923] 2 D. L. R. 342; 52 O. L. R. 72.—**CAN.**

394 i. *Evidence—Burden of proof—Negligence charged against officers & servants of Crown.*]—The burden of proof is upon the suppliant, who must show that there was negligence, & the maxim *res ipsa loquitur* cannot be invoked to relieve him of the onus in such actions under Exch. Ct. Act, 1906, s. 20.—MONTREAL TRANSPORTATION CO. *v.* R., [1924] 4 D. L. R. 808.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (b).

523 i. *Where warrant prima facie valid.*]—R. *v.* WONG YUEN (1925), 44 Can. Crim. Cas. 338.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—C.

c. For "4 C. L. R. 101" read "4 V. L. R. 101."

r i. ——— ——— ———.]—R. *v.* MOORE, [1924] 3 W. W. R. 923.—**CAN.**

sm. *Where proceedings so irregular as to preclude fair trial.*]—Accused discharged upon a writ of *habeas corpus*.—R. *v.* CAMPBELL (1924), 43 Can. Crim. Cas. 340.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—A. (e).

595 v. ———.]—An application for *habeas corpus* must be supported by an affidavit of prisoner, or an affidavit showing that his affidavit cannot be obtained.—R. *v.* MURRELL, [1924] 2 D. L. R. 647; 40 Can. Crim. Cas. 398.—**CAN.**

599 ii a. ——— ——— ———.]—R. *v.* MURRELL, No. 595 *v.*, *ante*.—**CAN.**

611. *Add. Annotation :*—**Reld.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

660a. ——.]—Assuming that an order transferring a convict sentenced to penal servitude in Northern Ireland to an English prison was not valid to justify the transfer between the Irish & the English prisons, it is a sufficient answer by the governor of the English prison, to whom a rule *nisi* for a writ of *habeas corpus* has been directed, that appct. was lawfully sentenced to a term of penal servitude, which is still current, & that he detains him under an order lawfully made by the Home Secretary.—R. v. MAIDSTONE PRISON (GOVERNOR), *Ex p.* MAGUIRE, [1925] 2 K. B. 265; 94 L. J. K. B. 679; 133 L. T. 710; 89 J. P. 89; 41 T. L. R. 456, D. C.; *on appeal*, 95 L. J. K. B. 55, C. A.

682a. ——.]—SECRETARY OF STATE FOR HOME AFFAIRS v. O'BRIEN, No. 801, *post*.

750. *Add. Annotation :—As to* (2) **Reld.** Secretary of State for Home Affairs v. O'Brien, [1923] A. C. 603.

787. *Add. Citation :* - 17 Jur. 1163.

793. *Add. Annotation :* **Distd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

795. *Add. Annotation :* - **Reld.** R. v. Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.

797a. —— —— **Person sentenced to penal servitude.**]—Where, on an application for a writ of *habeas corpus*, a Div. Ct. has held that a person sentenced to penal servitude by a ct. in Northern Ireland has been lawfully transferred to a convict prison in England to serve his sentence, no appeal lies to the Ct. of Appeal as the question of the legality of the transfer & detention is one arising out of a criminal cause or matter. - R. v. MAIDSTONE PRISON (GOVERNOR), *Ex p.* MAGUIRE (1925), 95 L. J. K. B. 55; 133 L. T. 710; 89 J. P. 161; 41 T. L. R. 554; 69 Sol. Jo. 691, C. A.

800. *Add. Annotation :*—**Mentd.** R. v. Maidstone Prison, *Ex p.* Maguire, [1925] 2 K. B. 265.

801. For the existing paragraph in original volume substitute as follows :—

From order declaring prisoner's right to liberty—Order not directing discharge—Order of Court of Appeal—No appeal to House of Lords.]—No appeal lies from an order of a competent ct. for the issue of a writ of *habeas corpus* where the ct. determines the illegality of appct.'s detention & his right to liberty, although the order does not direct his discharge.

Upon the application of a man whom the Home Secretary had caused to be arrested & deported to Dublin, where he was interned by the Govt. of the Irish Free State, the Ct. of Appeal, reversing the decision of the Div. Ct., granted an order *nisi*, which they subsequently made absolute, for the issue of a writ of *habeas corpus* directed to the Home Secretary, the ct. holding that the detention was illegal as the Home Secretary had no power to order a person to be interned in the Irish Free State; &, owing to a doubt whether the Home Secretary had control of the body, the order allowed him a week within which to make his return to the writ. Before the week had elapsed an appeal by the Home Secretary to the House of Lords was heard on the question of competency :—*Held :* notwithstanding the generality of the language of Appellate Jurisdiction Act, 1876 (c. 60), s. 3, the House had no jurisdiction to entertain the appeal. SECRETARY OF STATE FOR HOME AFFAIRS v. O'BRIEN, [1923] A. C. 603; 92 L. J. K. B. 830; 129 L. T. 577; 87 J. P. 174; 39 T. L. R. 688; 67 Sol. Jo. 747; 21 L. G. R. 600; 27 Cox, C. C. 400, H. L.; *previous proceedings, sub nom* R. v. SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* O'BRIEN, [1923] 2 K. B. 361, C. A.

Part VI.—Mandamus.

900. *Add. Annotations :—As to* (1) **Reld.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 315; Tate & Lyle *v.* L. & N. E. Ry. & L. M. & S. Ry. (1923), 43 T. L. R. 40.

PART V. SECT. 1, SUB-SECT. 4.—A. (d).

611 vi. —— ——.]—An appct. for a writ of *habeas corpus* is not at liberty to go from judge to judge of the Supreme Ct. in his quest of release.—*Re* LOO LEN (No. 2), [1924] 1 D. L. R. 910; 1 W. W. R. 735; 41 Can. Crim. Cas. 383; 33 B. C. R. 213.—**CAN.**

611 vii. —— ——.]—An appct. for a writ of *habeas corpus* whose discharge is refused by one judge, may make another application before another judge, even of the same ct., on the same or on different grounds, & so on from judge to judge, each judge being uncontrolled by the previous decisions.—R. v. GEE DEW (No. 1), [1924] 3 D. L. R. 153; 2 W. W. R. 773; 42 Can. Crim. Cas. 188; 33 B. C. R. 524.—**CAN.**

611 viii. —— ——.]—When an application for a writ of *habeas corpus* has been refused on its merits by a judge of the Ct. of K. B. in Manitoba, the only ct. of original jurisdiction in Manitoba in questions of that kind, the application cannot be renewed before any other single judge.—R. v. ROMANCHUK, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—**CAN.**

611 ix. —— ——.]—The dismissal of a *habeas corpus* application or applications is not a bar to the making of a new application for *habeas corpus* before the same judge. R. v. IACI, [1925] 2 W. W. R. 129; 43 Can. Crim. Cas. 364. **CAN.**

PART V. SECT. 1, SUB-SECT. 4.—B.

611. *Order nisi—Notification of prosecutor & magistrate not necessary.*]—R. v. KRZYCK, [1924] 1 W. W. R. 872; 42 Can. Crim. Cas. 144.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—C. (d).

611 i. ——.]—Where a judge of the Ct. of Appeal grants a writ of *habeas corpus*, the Ct. of Appeal has the right to quash the judge's order if granted erroneously.—R. v. ROMANCHUK, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—E.

611. *Duty of court—To consider all evidence, records & proceedings taken.*]—R. v. PAGE (1923), 41 Can. Crim. Cas. 59.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—H.

611 i. —— The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *habeas corpus* in aid of criminal matters, R. v. McADAM, [1925] 4 D. L. R. 33, [1925] 3 W. W. R. 257, 44 Can. Crim. Cas. 155, 35 B. C. R. 168.—**CAN.**

798 v. ——.]—When a judge of the full Ct. of K. B. has granted a writ of *habeas corpus* & discharged prisoner, there is no appeal.—R. v. ROMANCHUK, [1924] 3 D. L. R. 229, 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—I.

611. *When not given—Application of Crown Costs Act.*]—R. v. TEN CHUNG (1924), 34 B. C. R. 369.—**CAN.**

912. *Add. Annotation :-* **Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

1091. *Add. Annotation :*—**Mentd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685.

1130. *Add. Annotation :* — **Mentd.** Harper *v.* Hedges, [1923] 2 K. B. 314.

1141a. **Income Tax Act, 1918 (c. 40), s. 125, Sched. A., No. V., rr. 7, 8—Remedy by way of appeal.**]—As a result of information disclosed in connection with a claim to relief for the year 1920-21 under the above r. 8 the Inspector of Taxes discovered that the rents of certain properties had been increased during that year & that, by the above r. 7 (2), the owners were not entitled to the deductions in respect of repairs which had previously been granted from the Sched. A. assessments on the properties for that year. Additional assessments to income tax, Sched. A., were accordingly made in respect of the tax undercharged, & the Inspector of Taxes refused to certify the claim under r. 8 on the ground that relief under that rule applied only to assessments which were reduced for purposes of collection under r. 7. Notice of appeal was given by the owners against the additional assessments & against the refusal of the Inspector to certify the claim under r. 8, but at the owners' request the hearing of the appeals was postponed pending the decision of the ct. on rules *nisi*, which the owners had applied for & obtained, calling upon (*a*) the General Comrs. & the Inspector of Taxes to show cause why a writ of prohibition should not issue, prohibiting them from proceeding with the additional assess-
; & (*b*) the Inspector of Taxes to show why writs of *certiorari* & mandamus not issue, quashing his refusal to certify the claim under r. 8, & commanding him to furnish the requisite certificate in connection with the claim :—*Held :* discharging the rules *nisi*, the General Comrs. & the Inspector of Taxes had acted within their jurisdiction, &, as the statute prescribed procedure for appealing against the additional assessments & against the Inspector's refusal to certify the claim under r. 8, prohibition, *certiorari* & mandamus would not lie. - R. *v.* KINGSLAND PARISH INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* KINGSLAND PARISH .
TAX & INSPECTOR OF TAXES
8 "

R. TAX
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1150. *Add. Annotation :*—**Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 2 K. B. 832.

1152. *Add. Annotation :*—**Refd.** R. *v.* Lancashire JJ., *Ex p.* Tyrer, [1925] 1 K. B. 200.

1156. *Add. Annotation :*—*Generally*, **Mentd.** Huyton & Roby Gas Co. *v.* Liverpool Corpn. (1925), 42 T. L. R. 116.

1181. *Add. Annotations :*—**Mentd.** R. *v.* Labour Minister, [1924] 2 K. B. 210; L. & N. E. Ry. *v.* Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255; R. *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250.

1182. *Add. Annotations :*—**Mentd.** Barber *v.* Chudley (1922), 92 L. J. K. B. 711; *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237; Jackson *v.* Voss, [1923] 2 K. B. 357; *Re* Ludlow, Bence-Jones *v.* A.-G. (1923), 93 L. J. Ch. 30; *Re* Shakespeare Memorial Trust, Lytton *v.* A.-G., [1923] 2 Ch. 398; A.-G. *v.* National Provincial Bank, [1924] A. C. 262; Brighton College *v.* Marriott No. 1 (1924), 69 Sol. Jo. 229; Verge *v.* Somerville, [1924] A. C. 496; Brighton College *v.* Marriott, [1925] 1 K. B. 312; Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121; *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362; R. *v.* Income Tax Special Comrs., *Ex p.* Headmasters' Conference, Same *v.* Same, *Ex p.* Incorporated Assocn. of Preparatory Schools (1925), 41 T. L. R. 651; Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460; Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550.

1185. *Add. Annotation :*—*As to* (2) **Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38. *Generally*, **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1186. *Add. Annotation :* **Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

1217. *Add. Annotations :* **Refd.** R. *v.* Roberts, *Ex p.* Scurr, [1924] 2 K. B. 695; Roberts *v.* Hopwood, [1925] A. C. 578; Short *v.* Poole Corpn. (1925), 42 T. L. R. 107. **Mentd.** Sadler *v.* Sheffield Corpn., Dyson *v.* Sheffield Corpn., [1924] 1 Ch. 483.

1219. *Add. Annotation :* - **Refd.** Short *v.* Poole Corpn., [1926] Ch. 66.

1221. *Add. Citations :* 3 Nev. & M. K. B. 802; 3 L. J. M. C. 117.

PART VI. SECT. 1, SUB-SECT. 3. A.

1. *Writ sought for ulterior motive*

21), 49 N. B. R. 207.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3. C.

vi. — .]

that as some specific right in
to en the duty, performance
of which] the aid of the ct. to

, [1924] 4 D. L. R. 459
O. L. R. 531.—**CAN.**

PART VI. SECT. 1, SUB-SECT. E.

s c.

W. W.

PART VI. SECT. 1, SUB-SECT. 3.— F. (a).

1038 .] - An application for

remedy. - R. (JOHANNESSON) *v.* CARTIER RURAL MUNICIPALITY, [1922] 2 W. W. R. 670; 68 D. L. R. 741.—**CAN.**

1038 v. ——.] —A
not available if another remedy is given by statute.—*Re* VIKING MUNICIPAL HOSPITAL DISTRICT No. 10, [1923] 4 D. L. R. 1123. - **CAN.**

PART VI. SECT. 1, SUB-SECT. 5. - A. (b).

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PART VI. SECT. 1, SUB-SECT. 5.

1221 vii. —— *Not to hear case jurisdiction.*]—R. *v.*
3 D. L. R. 1092; 57 N. S. R.
—**CAN.**

viii. —— *In criminal matter.*]—
no Ct. of Ontario has juris-
to mandamus a county ct.
judge's criminal ct. to try, according to the procedure of Criminal Code, s. 827, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules
been made as to the issue of
damus in a criminal matter does not preclude the Supreme Ct.

1228. *Add. Citation :* - *sub nom.* R. v. LEICESTER, DEPUTIES OF FREEMEN, 15 Q. B. 671 ; 117 E. R. 613.
Add. Annotations : — **Folld.** R. v. Monmouth Corpn., R. v. Bolton Corpn. (1870), L. R. 5 Q. B. 251. **Refd.** *Ex p.* Portingell, [1892] 1 Q. B. 15 ; R. v. Somerset JJ. (1900), 16 T. L. R. 166. **Mentd.** R. v. Pawlett (1873), L. R. 8 Q. B. 491.

1293. *Add. Annotation : Generally.* **Mentd.** Hesketh v. Birmingham Corpn. [1924] 1 K. B. 260.

1306. *Add. Annotations :* **Mentd.** R. v. Labour Minister, [1921] 2 K. B. 210 ; L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

1323. *Add. Annotation :* - **Refd.** Everett v. Griffiths, [1924] 1 K. B. 941.

1337. *Add. Annotation :* — **Refd.** Everett v. Griffiths, [1924] 1 K. B. 941.

1524. *Add. Annotation :* - **Mentd.** Iscomfield v. Thornely, [1926] A. C. 10.

1736. *Add. Annotation :* - **Mentd.** Griffiths v. Studebakers, [1924] 1 K. B. 102.

1809. *Add. Annotations :* -**Refd.** *Re* Letters Patent No. 130,207, *Re* Carbonit Akt., [1924] 2 Ch. 53 ; Swift v. Board of Trade, [1926] 2 K. B. 131.

1810. *Add. Annotations : Generally,* **Mentd.** I. R. s. v. Burrell, [1924] 2 K. B. 52 ; Herbert s., I. R. C

Part VII.—Quo Warranto.

1837. *Add. Annotation :* **Mentd.** Layzell v. Thompson (1926), 43 T. L. R. 58.

1846. *Add. Annotation :* - - **Refd.** Everett v. Griffiths, [1924] 1 K. B. 941.

1847. *Add. Annotation :* - **Refd.** Everett v. Griffiths, [1924] 1 K. B. 941.

1952. *Add. Annotation :* - **Refd.** Everett v. s, [1924] 1 K. B. 941.

its full powers. A.-G. for o v. DALY, [1924] A. C. 1011 ; 94 L. J. P. C. 21 ; 132 L. T. 219 ; 40 T. L. R. 814.—**CAN.**

1954. *Add. Annotation :* - **Refd** Griffiths, [1924] 1 K. B. 941.

2007. *Add.* : - **Refd.** Everett v. G [1924] 1 K B. 941.

2034. *Add. Annotation :* **Mentd.** v. Thornely (1925), 89 J. P. 109.

PART VI. SECT. 1, SUB-SECT. 5. - A. (e).

c i. —.]—The Supreme Ct. of has jurisdiction to grant a to a judge of a division ct. to hear an a from a conviction of deft., by a police magistrate, of offence contrary to Inland Reve Act, 1906, s. 180 (f).—R. v. SPE (1924), 55 O. L. R. 290.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5. A. (b).

sq. *record of acqui*
After *of judge.*]- A r
of a county ct. criminal ct. cannot be compelled by mandamus to of acquittal for lack of jurisdiction, after a long interval of time. If there is any right to have the

is the present judge. —*Re* 922), 38 Can. Crim. Cas. 55.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—B.

1270 iv. —— *Not where dism justified.*]—*Re* MONAGHAN (1924), N. S. R. 242. —**CAN.**

PART VI. SECT. 2.

1326 iv. —— ——.] — (r. JOHNSON, [1921] 3 W. W. R. 83 70 D. L. R. 862 ; 30 B. C. R. 354. **CAN.**

PART VI. SECT. 6, SUB-SECT. 1. A. (a).

In a it to s to the the of council & are involved.—R. MUNICIPAL DISTRICT No. 552, [3 W. W. R. 857 ; 70 D. L. R. 5 **CAN.**

PART VII. SECT. 2.

1340 i. *Discretion of court (*
consider all circumstances.] - ication for a *quo warranto*, the ct. will consider whether in all the circumstances the public interest calls for the exercise of its discretion in favour of appt.- R. (Bourbeau) v. Johnston, [1923] 2 D. L. R. 278 ; 50 N. S. R. 214.- **CAN.**

1340 ii. - - - - - - - .]- Where an application for *quo warranto* is made to the Ct. of K. B., the granting or withholding of leave is in the d scretion of the ct., & the discretion ought to be exercised upon a sound consideration of the particular circumstances of each . R. (MATHESON) v. HOWE, [1924] . L. R. 905 ; 2 W. W. R. 596. **CAN.**

PART VII. SECT. 3, SUB-SECT. 1.- F.

st. - - - - *Failure to post name of* —Where after being legally as a councillor for a rural , a candidate informs the clerk returning officer that he is withdrawing, but does not & the returning officer does not post his name as one of the

by a correct thod for testing the latter's right the office.—R. (MACKAY) v. Good, 22] 1 W. W. R. 712 ; 66 D. L. R.

.]—Where a elected to a of his for can only petition ; d from of for a do.—R. (NE v. . W. R. 511 **CAN.**

— *Statutory* .]— not

implication R. (McARTHUR) v. MA COCK, [1924] 4 D. L. R. 1223 ; W. W. R. 540. **CAN.**

PART VII. SECT. 4, SUB-SECT. 2. B. (b).

c i. .] R. (MATHESON) v. HOWE, [1924] 2 D. L. R. 905 ; 2 W. W. R. 596. **CAN.**

PART VII. SECT. 4, SUB-SECT. 2. B. (c).

1969 i. *What*
a in
or, to , , be
at th the alleged e subsequent
conduct of a relator in agreeing to overlook the equal alleged guilt of others does not constitute disqualifying acquiescence. - R. (MATHESON) v. HOWE, [1924] 2 D. L. R. 905 ; 2 W. W. R. 596 **CAN.**

PART VII. SECT. 4, SUB-SECT. 3.

to
for a
to that remedy. A delay from Oct. to Apr., the ct. having sat twice in

D. L. R. 589 **CAN.**

PART VII. SECT. 4, SUB-SECT. 4.—A.

at instance of relator.] on for a *quo warranto*, an
of the r
the service of the
of it
—R. (MACKAY) v. Good, W. W. R. 712 ; 66 D. L. **CAN.**

PART VII. SECT. 5.

- - - - - -] R. (McARTHUR) v. 3 D. L. R. 812.—**CAN.**

Part VIII.—Prohibition.

2110. *Add. Annotations:*—**Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38; Hunter *v.* Stadtseefischerei Gemeinnützige Ge- (1925), 133 L. T. 488.

2112. *Add. Annotation:*—*As to* (1) **Refd.** St. , etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38.

2121. *Add. Annotation:*—*As to* (2) **Followed.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2129. *Add. Annotations:*—**Apld.** St. Magnus, etc. Church Council *v.* London Diocese P. 38. **Refd.** R. *v.* North, *Ex p.*), 43 T. L. R. 60.

2130. *Add. Annotation:*—**Refd.** R. *v.* Electricity *Ex p.* London Electricity Joint Co. (1920), [1924] 1 K. B. 171; R. *v.* Powell, *Ex p.* Camden, [1925] 1 K. B.

2132. *Add. Annotations:*—**Consd.** R. *v.* S Tax Comrs., *Ex p.* English Crown Co., [1925] 2 K. B. 250. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2132a. —R. *v.* KINGSLAND OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* KINGSLAND PARISH INCOME TAX COMRS. & INSPECTOR OF TAXES, No. 1141a, *ante*.

2138. *Add. Annotation:* **Mentd.** R. *v.* Labour Minister, [1924] 2 K. B. 210.

2142a. —] A writ of prohibition will not lie to restrain justices in petty sessions from enforcing a warrant of imprisonment on an order for payment of rates where no remedy of a preventive, as distinct from a corrective, nature can result from the issue of the writ.—R. *v.* NORFOLK JJ., *Ex p.* DAVIDSON (1925), 69 Sol. Jo. 558, D. C.

2149a. ——.]—Appts. having obtained a rule for a writ to prohibit the General Comrs. from making, allowing, confirming, enforcing, or an assessment to tax:—*Held:* prohibition would not lie to the General Comrs., who had acted in e with their statutory duty in o assessment & had not exceeded their jurisdiction.—R. *v.* SWANSEA INCOME TAX COMRS., *Ex p.* ENGLISH CROWN SPELTER Co., [1925] 2 K. B. 250; 94 L. J. K. B. 718; 133 L. T. 143; 41 T. L. R. 505; 9 Tax Cas. 437; *sub nom.* R. *v.* INCOME TAX GENERAL COMRS., *Ex p.* ENGLISH CROWN SPELTER CO., LTD., 69 Sol. Jo. 606.

2196. *Add. Annotation:*—**Mentd.** Lapish *v.* Braithwaite (1924), 93 L. J. K. B. 1123.

2200. *Add. Annotations:*—**Consd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38; R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2220. *Add. Annotation:*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2221. *Add. Annotation:*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2254. *Add. Annotation:*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2287. *Add. Annotations:*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. **Mentd.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.

2290. *Add. Annotation:*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2303. For the existing paragraph in original volume substitute as follows:—

Electricity Commissioners.]—The powers of the Electricity Comrs. are to be exercised judicially & not ministerially, & a writ of prohibition will issue if they make an order giving effect to an *ultra vires* scheme.—R. *v.* ELECTRICITY COMRS., *Ex p.* LONDON ELECTRICITY JOINT COMMITTEE CO. (1920), Ltd., [1924] 1 K. B. 171; 93 L. J. K. B. 390; 130 L. T. 164; 88 J. P. 13; 39 T. L. R. 715; 68 Sol. Jo. 188; 21 L. G. R. 719, C. A.

Annotation:—**Mentd.** Prager *v.* Blatspiel Stamp & Heacock, [1924] 1 K. B. 566.

2309. *Add. Annotation:*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2310. *Add. Annotation:*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2312. *Add. Annotation:*—**Refd.** R. *v.* Electricity

PART VIII. SECT. 2.

N. S. W.)

L. L.
Co., Ltd. (1922), 30 C. L. R. 488; 28 Argus L. R. 252; 22 S. R. N. S. W. N. S. W. W. N.
N. S. W. Ind. Arbn. Ct

PART VIII. SECT. 4, SUB-SECT.

2150 vi. ——.) — Prohibition ct.—
. THE [1923] 2 . R. —CAN.

2150 door.
3 D. L. ; 44 Can. Crim.

I. SECT. 4, SUB-SECT. 4.—A.

2184 iv. —— ——.)—*Re* WILTON N. S.

PART VIII. SECT. 5, SUB-SECT. 1.

sh. *Hearing.*)—A writ of prohibition prohibiting a ct. judge from a
mary
want of
R. (L
[1921] . W. R. 674; 66 D. L. R. 521; . Crim. Cas. 326; 15 Sask. R. CAN.
ed. .)—A motion for pro- commenced before the heard the evidence in a may be dismissed without appct. as to any motion

Co.
.—CAN.

PART VIII. SECT. 5, SUB-SECT.
ct

PART VIII. SECT. 6.

I. —— *Not to persons*
as
(KELLY) v.
23] 2 I. R. 58.—IR

s I. WATERSIDE OF v.
, LTD.
34 C.

b. Add " I. on other
16 S. C. R.

omrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2314. *Add. Annotation :*—**Mentd.** r. Graham, [1923] P. 31.

2321. *Add. Citation :*—[1923] P. 38.

2382. *Add. Annotations :*—**Reld.** St. —— Parochial Church Council v. London —— Chancellor, [1923] P. 38. **Mentd.** R. v.

2388. *Add. Annotation :* - **Mentd.** Ingle v. Farrand, [1925] 2 K. B. 728.

Part IX.—Certiorari.

2421. *Add. Annotations : —As to* (1) **Reld.** R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. *As to* (3) **Reld.** R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. *Generally*, **Mentd.** Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586.

2422a. —— **Remedy by way of appeal—Notice of appeal given.**]—R. v. Kingsland Parish, Inspector of Taxes. *Ex p.* Pearson. Kingsland Estate, R. v. Kingsland Parish Income Tax Comrs. & Inspector of Taxes, No. 1141a, *ante*.

2430. *Add. Annotation :*—**Mentd.** Ord v. Ord, [1923] 2 K. B. 432.

2448. *Add. Annotation :*—**Folld.** R. v. Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2449a. —— **Not to quash order.**]—The K. B. Div. of the High Ct. of Justice has no jurisdiction to issue a writ of *certiorari* for the purpose of removing into that ct. an order of the Central Criminal Ct. with a view to its being quashed. — R. v. Central Criminal Court JJ., *Ex p.* London County Council, [1925] 2 K. B. 43; 94 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 731, D. C.

2458. *Add. Annotation : -As to* (3) **Reld.** R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2713. *Add. Annotation :* - **Consd.** R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2734. *Add. Annotation : As to* (2) **Reld.** Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586.

2735. *Add. Annotation :* - **Reld.** Frome United Breweries Co. v. Bath JJ., [1926] A. C. 5

PART VIII. SECT. 7.

2319 vis. ——.]— ces in which :—*Held :* g to the judge of the Division Ct., under Division Cts. Act, to set a judgment, had not waived his to move for prohibition. - *Re* r. Kerosky, [1925] 3 D. L. R. 1015; 57 O. L. R. 353.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 4.

ak. *Against parties.*]— - Prohibition inst parties as well a the judge of the inferior ct.- BERG v. THE MACCABEES, [1923] 2 W. W. R. 320.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 10.

2401 i. *Not from order as to costs.*]— On granting a writ of prohibition preventing a magistrate from proceeding with the hearing of a charge, costs given against the informant. appeal as to costs: —*Held :* the ap should be dismissed.—R. v. [1921] 3 W. W. R. 768; 66 D. L. R. 497; 36 Can. Crim. Cas. 255; L. R. 29.—**CAN.**

PART IX. SECT. 1.

g i. —— ——.]— R. v. (1921), 61 D. L. R. 663; 36 Can. Crim. Cas. 77; 51 O. L. R. 121.—**CAN.**

g ii. —— ——.]—R. v. Woodstock, Town Assessors, *Ex p.* Bank of Nova Scotia (1922), 68 D. L. R. 48.—**CAN.**

g iii. —— ——.]—R. v. Wood), 43 Can. Crim. Cas. 382.—**CAN.**

I. L. R. 49 Mad.

z i. —— ——.]—R. v. Olsen (1923), B. C. R. 516.—**CAN.**

PART IX. SECT. 4.

rule — Persons to act as court.]—Where of authority by a tri from the beginning, it to *certiorari*.- R. (Kelly) L., [1923] 2 I. R. 58.— **IR.**

PART IX. SECT. 5, SUB-SECT. 2.—A.

2495 ii. ——.] A writ of is not granted or as a matter of legal but is an application to the of the ct., & where there questions of fact which d be satisfactorily tried out vits, but should be tried by ord stimony, & the questions in are pending for decision in the Ct. of K. B., the application for *certiorari* will not be granted.—Work-

THURST Lu ER Co., 4 D. L. R. 84.— **CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—A.

2711 i. —— —— *Distress warrant for liquor exportation tax.*]- Where the duty of assessing a tax vested with the A.-G. for the province, & the pro- only to or by :—*Held : certiorari* would not to bring into the Supreme Ct. a for not judicial.—Hetherington v. Secret Export Co., Ltd., [1924] A. C. 94 L. J. P. C. 1; 132 L. T. 215.

of (and of) on of an offence viction the charge, & on ct. he is reversed , redress may be .—R. v. Meehan, [1925] 2 D. L. R. 411; [1925] 1 W. W. R. 819; 43 Can. Crim. Cas. 325.— **CAN.**

PART IX. SECT. 6, SUB-SECT. 2. B. (a).

2763 i. *General rule.*]— R. v. Barry, *Ex p.* Lindsay (1922), 70 D. L. R. Can. 190. **CAN.**

2763 ii. hether a a cour. Act, R. S. C., 1906 (c. was made in excess of h ct, [1924] 2 D. L. R. [1925] 1 W. W. R. 1044.— **CAN.**

(1) under *R. S.* for a

2 W. W. R. L. R. 718; 38 Can. **CAN.**

2789 ii. When a county judge has acted entirely within jurisdiction & has decided a ques of fact upon evidence properly before him, *certiorari* does not lie to remove & ii. of THE LUMBER Co., Ltd. (1924), 51 N. P. R. 440.— **CAN.**

for a deft. had pleaded guilty, & the R. v Ann- **CAN.** on. — been informed by a sworn *Held :* that

2795. *Add. Citation :*—27 Cox, C. C. 253.
Add. Annotations :—**Refd.** *R. v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192. **Mentd.** *Nadan v. R.*, [1926] A. C. 482.

2812. *Add. Annotation :*—**Expld. & Distd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2820. *Add. Annotation :*—**Mentd.** Fox *v.* Fox, [1925] P. 157.

2834. *Add. Annotation :*—**Refd.** R. *v.* Adams, *Ex p.* Pope, [1923] 1 K. B. 415.

2862. *Add. Annotation :* **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

2869. *Add. Annotation :*—**Consd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

2923. *Add. Annotation :*—**Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

2955. *Add. Annotation :*—**Distd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

3069. *Add. Annotation :*—**Refd.** R. *v.* Adams, *Ex p.* Pope (1923), 128 L. T. 597.

3356. *Add. Annotation :*—**Mentd.** R. *v.* Corfield (1923), 128 L. T. 305.

3560. *Add. Citation :*—2 L. M. & P. 130.

3581. After this case add "*See, now,* Judicature (Consolidation) Act, 1925 (c. 49), s. 25."

Part X.—The Attorney-General.

3637. *Add. Annotations :* **Folld.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416. **Refd.** A.-G. *v.* Denby, [1925] Ch. 596. **Mentd.** ar *v.* Gas Light & Coke Co., [1924] 2

3637a. —— .]- Where the A.-G. has exercised his discretion by issuing his fiat for the prosecution of an action against a public body to strain an unauthorised exercise of its powers, the ct. will not consider whether the action is one proper to be brought in the

R. *v.* Lee Wah Dai (1923), 41 Can. Crim. Cas. 152.—**CAN.**

sp. —— .] - The ct. on *certiorari* will quash a conviction by a magistrate, made without evidence being taken the statement of the sworn or that accused pleaded where it appears to the ct. that a did not really understand what he was charged with. In such a to have gu

to convict. R. *v.* Mlaker, [1923] 3 W. W. R. 988; 40 Can. Crim. Cas. 287.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (b) i.

2801 i. *General rule.*] Want of jurisdiction in a magistrate & irregularities in procedure which touch the

circumstances which of by way of *certiorari*, even pet. has a right of appeal.
Okrey *v.* Spangler, [1925] 1 D. L. R. 850; [1925] 1 W. W. R. 518; 19 Sask. L. R. 256. **CAN.**

2801 ii. —— R. *v.* Ryan, 1 D. L. R. 87; 43 Can. C. 223; 33 N. B. 104.—**CAN.**

PART IX. SECT. 6, SUB-SECT. B. (b) iii.

i.
of an inferior ct.

matter which that ct. has to try, it cannot by a wrong decision with to that fact give itself juris which it would not otherwise

In but
ct.
into the that
[In r.
. R. 55.—

PART IX. SECT. 6, SUB-SECT. 2. B.

2870 i.

a writ of *certiorari* should issue & the R. (Ex r. Tipperary County J Justice, [1924] 2 I. R. 69.

PART IX. SECT. 6, SUB-SECT. 2.—B. (c).

st. A conviction can be on the ground of perjury or other fraud.—R. *v.* Sarick, [1924] 1 D. L. R. 695; 40 Can. Crim. Cas. 222; 19 Alta. L. R. 677; [1923] 2 W. W. R. 1126.—**CAN.**

PART IX. SECT. 7, SUB-SECT. 2.—C. (a).

3042 i. *Right not away*—I statute away the right of *certiorari*, it not disentitle the Crown to , where the Crown is not there are no words necessarily a refe to the Crown.—R. *v.* On Sing, 2 W. W. R. 258.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 2.

3287 i. *No appeal lies—Criminal matter.*] The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *certiorari* in aid in criminal matters.—R. *v.* McAdam, [1923] 4 D. L. R. 33; [1923] 3 W. W. R. 257; 44 Can. Crim. Cas. 155; 35 B. C. R. 168.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (c).

3373 ii. ——
Leave may be given to amend a notice of motion to quash a conviction by

to be re
v. Marcovich, 2 W. W. R.

PART IX. SECT. 9, SUB-SECT. 3. A. (d) ii.

3410 i. *Absence or*

taken away by statute & notwithany law or authority deciding that the ct. cannot look at the evidence to quash a conviction, the ct. is entitled, on a *habeas corpus* application, to receive affidavit evidence to show that the magistrate had no jurisdiction or has exceeded his jurisdiction in convicting appet.—R. *v.* Montemurro, [1924] 2 W. W. R. 250.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (e).

sw. *Affidavits tending to quilt of accused—Not*
R. *v.* Mlaker, [1923] 3 W. W. R. 988.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—K.

3556 i. *General rule—Whether court will*
In the case of a summary for an indictable offence the ct. on *certiorari* is not pre from examining the evidence to tain if there was any legal evi upon which accused could be or ought to have been convicted.—R. *v.* Oakes, [1923] 1 W. W. R. 1220; 39 Can. Crim. Cas. 329.—**CAN.**

3556 ii. ——.]—R. *v.* Jackson, [1924] 1 W. W. R. 847; 41 Can. Crim. Cas. 416.—**CAN.**

PART X. SECT. 3, SUB-SECT. 1.

ss. *Cannot sue in official name on behalf of himself personally.*]—A.-G. Ontario *v.* Russell (1921), 64 D. L. R. 59; 1 O. L. R. 103.—**CAN.**

PART X. SECT. 5.

3723 i. *Effect of fiat—On amount erable.*]—An award for a sum in excess of that named in the A.-G.'s fiat :—*Held :* void, even though A.-G.'s

Brach *v.* Hydro-Electric Power Commission of Ontario, [1925] 4 D. L. R. 513; *affg.*, [1924] 4 D. L. R. 995; 56 O. L. R. 35.—**CAN.**

3686. *Add. Annotation :*—**Refd.** A.-G. v. County of London Electric Supply Co., [1926] Ch. 542.

3688. *Add. Annotation :*—**Refd.** A.-G. v. Denby, [1925] Ch. 596.

3719. *Add. Annotation :*—**Apld.** Hurley v. Stepney B. C. (1923), 67 Sol. Jo. 767.

3722a. Proceedings to restrain borough council from reducing wages of employees.]—In an action by three members of a borough council for a declaration that a resolution of the council reducing the wages of the council's employees was *ultra vires* & invalid, on the ground that the resolution was not by a two-thirds majority in accordance with the council's bye-laws : —*Held :* the A.-G. must be a party to the action. HURLEY v. STEPNEY BOROUGH COUNCIL (1923), 67 Sol. Jo. 767.

3733. *Add. Annotation :* **Refd.** *Re* Letters Patent No. 130,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

3736. *Add.* A *As to* (1) **Refd.** *Re* L. No. 130,207, *Re* Carbonit Akt., [1924]

CUSTOM AND USAGES.

Part I.—Custom.

22. *Add. Annotation: Generally*, **Mentd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

61. *Add. Annotation:* **Mentd.** Sack *v.* [1925] Ch. 235.

74. *Add. Annotations:*—**Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879. **Mentd.** Brocklebank *v.* R., [1925] 1 K. B. 52.

86. *Add. Annotation:—Generally*, **Mentd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

164. *Add. Annotation:*—**Refd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

212. *Annotation:*—**Mentd.** The Fagernes, P. 185.

Part II.—Usages Generally.

303. *Add. Annotation:* **Mentd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

304. *Add. Annotations:* **Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

369. *Add. Annotation:* **Mentd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

393. *Add. Annotation:* **Mentd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

434. *Add. Annotation:*—**Refd.** Schiller *v.* Petersen (1924), 130 L. T. 810.

462. *Add. Annotation:* **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

497. *Add. Annotation:* **Refd.** Scriven *v.* Schmoll Fils Insce. (1924), 40 T. L. R. 677.

501. *Add. Annotation:* **Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

510. *Add. Annotation:* **Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

537. *Add. Annotation:* **Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

540. *Add. Annotation:*—**Mentd.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121.

543. *Add. Citation:*—*affg.* S. C. *sub nom.* THE TURID, [1921] P. 146, C. A.

Add. Annotations:—**Folld.** Hillas *v.* Rederi Akt. Acolus (1926), 43 T. L. R. 67. **Refd.** The Re

The Fritiof, The Svein Jarl (1924), 131 L. T. 764.

544a. ——.]—Pltfs., shipowners, chartered a steamer to defts. to carry a cargo of timber from the Baltic to Hull. The charterparty contained a clause as follows: "Cargo to be loaded & discharged with customary steamship dispatch according to the custom of the respective ports. The cargo to be brought to & taken from alongside the steamer at charterer's risk & expense as customary." The steamer discharged the cargo at Hull in due course, but disputes arose between pltfs. & defts. as to the division of the cost of discharging the cargo. Pltfs. brought an action to recover a sum which they had paid in effecting the discharge which they said should have been paid by defts. Defts. refused to pay on the ground that by the custom of the port of Hull the expense in question should be borne by the shipowners: *Held:* the custom relied on by defts. was inconsistent with the language of the charterparty & was not admissible in order to decide upon whom the expense in question should rest.—REDERI AKT. ACOLUS *v.* HILLAS & CO., LTD. (1925), 95 L. J. K. B. 103; 134 L. T. 184; 42 T. L. R. 69; 70 Sol. Jo. 109; 31 Com. Cas. 59; 16 Asp. M. L. C. 565, C. A.

545. *Add. Annotation:*—**Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

546. *Add. Annotation:*—**Consd.** Rederi Akt. Acolus *v.* Hillas (1925), 42 T. L. R. 69.

550. *Add. Annotation:*—**Mentd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

Part III.—Particular Usages.

595. *Add. Annotation:*—**Mentd.** Laurie & More- *v.* Dudin, [1925] 2 K. B. 383.

616. *Add. Annotation:*—**Refd.** United States Board *v.* Strick, [1926] A. C.

Dreyfus (1924), 131 L. T. 177; Bunge y Co. *v.* Brightman, [1925] A. C. 799. Brightman *v.* Bunge y Born, [1924] 2 K. B. 619; Matheos S.S. *v.* ——, [1925] A. C. 654. **Mentd.** Einar Bugge A. S. *v.* Bowater (1925), 31 Com. Cas. 1.

:—**Refd.** Lake *v.* Simmons , K. B. 586.

643. *Add. Annotation:*—**Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

646. *Add. Annotation:*—**Mentd.** Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

I. *Add. Annotation* :—**Mentd.** Cohen v. Rocbe (1920), 05 L. J. K. B. 945.

678. *Add. Annotation* :—**Mentd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

680. *Add. Annotation* :—**Mentd.** Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.

700. *Add. Annotation* :—**Distd.** Mikkelsen v. Arcos (1925), 42 T. L. R. 3.

701. *Add. Annotations* :—**Mentd.** Finn v. Skelton Iron, Steel & Coal Co. (1924), 131 L. T. 213; Hilton v. Westminster Bank (1926), 135 L. T. 354.

710. *Add. Annotations* :—**Refd.** Tournier v. National Provincial & Union Bank of England, [1924] 1 K. B. 461; Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.

712. *Add. Annotation* :—**Refd.** Williams v. Mannsullan Freres (1923), 20 Com. Cas. 42.

DAMAGES.

Part I.—Definitions, Nature and Classification.

8. *Add. Annotation :* **Reld.** Peyrac v. Wilkinson, [1924] 2 K. B. 166.

9. *Add. Annotations :* **Consd.** Admiralty Comrs. v. S.S. Chekiang, [1926] A. C. 637 ; Admiralty Comrs. v. S.S. Susquehanna, [1926] A. C. 655. **Mentd.** The Molière (1924), 11 T. L. R. 151.

14. *Add. Annotations :*—**Reld.** Performing Right Society v. Mitchell & Booker, [1924] 1 K. B. 762 ; Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

15. *Add. Annotation :*—**Consd.** Shapiro v. La Morta (1923), 130 L. T. 622.

19. *Add. Annotation :*—**Consd.** Ilford U. D. C. v. Beal, [1925] 1 K. B. 671.

Part II.—Rules and Principles in Awarding Damages.

20. *Add. Annotation :* **Mentd.** Everett v. Ryder (1926), 135 L. T. 302.

26. *Add. Annotations :* **Consd.** The Chekiang, [1925] P. 80 ; The Susquehanna, [1925] P. 196.

29a. **Property destroyed by fire.**] A cottage was almost completely destroyed by fire caused by a spark emitted from a steam-roller which was found to constitute a nuisance. In assessing the damages recoverable by the owner of the cottage :—*Held :* the measure of damage was not the fair cost of rebuilding the cottage & making it as good & habitable as before the fire, but the difference between the money value of the owner's interest before & after the fire.—Moss v. CHRISTCHURCH RURAL DISTRICT COUNCIL. ROGERS v. SAME. [1925] 2 K. B. 750 ; 95 L. J. K. B. 81 ; 23 L. G. R. 331.

30. *Add. Annotation :* **Reld.** York Glass Co. v. Jubb (1925), 134 L. T. 30.

34. *Add. Annotation :* **Apprvd.** Swift v. Board of Trade, [1925] A. C. 520.

53. *Add. Annotations :* **Consd.** Admiralty Comrs. v. S.S. Chekiang, [1926] A. C. 637 ; Admiralty Comrs. v. S.S. Susquehanna, [1926] A. C. 655.

54. *Add. Annotations :* **Consd.** Admiralty Comrs. v. S.S. Chekiang, [1926] A. C. 637. **Reld.** Admiralty Comrs. v. S.S. Susquehanna, [1926] A. C. 655.

57. *Add. Annotation :* **Consd.** The Chekiang, [1925] P. 80.

58. *Add. Annotation :* **Reld.** Admiralty Comrs. v. S.S. Susquehanna, [1926] A. C. 655.

63. *Add. Annotations :* **Reld.** The Koursk, [1924] P. 140 ; Debenham v. Perkins (1925), 133 L. T. 252.

64. *Add. Annotation :*—**Reld.** Huyton & Roby Gas Co. v. Liverpool Corpn. (1925), 42 T. L. R. 116.

98. *Add. Annotation :* As *to* (1) **Reld.** Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

PART II. SECT. 3.

29a i. *Application of rule. In tort.—Property destroyed by fire.*] Where damages were recovered for loss through destruction of property by fire caused by deft.'s negligence : *Held :* the measure of damages was not the cost of replacing the property destroyed, but the value of the property as it stood at the time of the destruction. The cost of replacing may be taken into account in arriving at such value. STEVENS v. ARMSTRONG LUMBER CO., [1924] 1 D. L. R. 1163 ; 1 W. W. R. 660 ; 33 B. C. R. 299.—**CAN.**

29a ii. ——.]—Where there had been misdirection as to the damages, viz. that they should be assessed on a replacement basis :—*Held :* there should be a new trial.—O'NEIL v. DOMINION COAL CO., [1924] 1 D. L. R. 961 ; 57 N. S. R. 126.—**CAN.**

30 v. *Where plaintiff has alternative claim.—Duty to elect.*]—Damages cannot be recovered both in tort & for breach of contract, when the tort & the breach of contract result from the same act ; in such a case pltf. must elect or be deemed to have elected ; &, if he seeks to recover damages for breach of contract, they must be measured upon that basis, & not upon the basis of any coincident or concomitant act of tort.—TORONTO HOCKEY CLUB v. ARENA GARDENS, LTD., [1924] 4 D. L. R. 384 ; 55 O. L. R. 509 ; *affd.* [1925] 4 D. L. R. 546.—**CAN.**

PART II. SECT. 4.

38 xii. *Goods not of warranted description—Allowance made.*]—Certain goods supplied under a contract not answering the warranted description were taken back & an adjustment made in respect of them :—*Held :* the purchaser could not claim damages for the breach.—HAMILTON GEAR & MACHINE CO. v. LEWIS BERTRAM, [1924] 3 D. L. R. 367 ; 54 O. L. R. 383.—**CAN.**

51 iv. *No reasonable expectation of pecuniary benefit—Death of young child in accident.*]—*Held :* a verdict of damages awarded to parents of young children killed in an accident arising from negligence could not stand, where there was no reasonable expectation of future pecuniary benefit. In a case of this kind damages are not awarded as a solatium nor from sentimental considerations.—HOGAN v. R., [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

51 v. *Accident to wife—No deprivation of services or society.*]—Pltf. having suffered physical injury through a street accident causing nervous shock :—*Held :* an award of damages to pltf.'s husband could not stand as he had not been deprived of his wife's services or society.—HOGAN v. R., [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

PART II. SECT. 5.

63 i. *Damages caused the gist of the action—Prospective damage—Whether recoverable.*]—A married woman having suffered from nervous shock as the result of an accident, but not so as to deprive her husband of her services or society :—*Held :* that he might be put to expense in the future was a consideration too remote to entitle him to damages.—HOGAN v. R., [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

63 ii. ——.]—In an action for damages resulting, not from the construction of works, but from the operating thereof, as, e.g., the putting of water into a canal, damages are assessable only for the injury done up to the trial, & prospective damages cannot be assessed, but pltf. must seek further damages from time to time as

Part III.—Directness and Remoteness.

101. *Add. Annotation :*—*As to* (1) **Refd.** Hall v. Pim (1926), 32 Com. Cas. 46.

114. *Add. Annotations :*—**Consd.** Sorrell v. Smith, [1925] A. C. 700. **Refd.** Black v. Admiralty Comrs. (1924), 93 L. J. K. B. 341 ; Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler, [1926] Ch. 600. **Mentd.** G. W. K. v. Dunlop Rubber Co. (1926), 42 T. L. R. 376.

123. *Add. Annotation :*—**Refd.** Britannia Hygienic Laundry Co. v. Thornycroft (1926), 135 L. T. 83.

126. *Add. Annotation :* **Refd.** Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522.

146a. —— —— **As result of shock.**]—Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife :—*Held :* pltf. would establish a cause of action if he established that the death of his wife resulted from the shock occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—HAMBROOK v. STOKES BROTHERS, [1925] 1 K. B. 141 ; 94 L. J. K. B. 435 ; 132 L. T. 707 ; 41 T. L. R. 125, C. A.

149. *Add. Annotations :* **Consd.** Hambrook v. Stokes (1924), 41 T. L. R. 125. **Mentd.** Venn v. Tedesco, [1926] 2 K. B. 227.

150. *Add. Annotation :* **Consd.** Hambrook v. Stokes (1924), 41 T. L. R. 125.

151. *Add. Annotations :* **Apprvd.** Hambrook v. Stokes (1924), 41 T. L. R. 125. **Mentd.** Venn v. Tedesco, [1926] 2 K. B. 227.

152. *Add. Annotation :* **Consd.** Hambrook v. Stokes (1924), 41 T. L. R. 125.

165. *Add. Annotation :* **Refd.** Leeds Industrial Co-op. Soc. v. Slack, [1924] A. C. 851.

166. *Add. Annotations :* **Refd.** Leeds Industrial Co-op. Soc. v. Slack, [1924] A. C. 851. **Mentd.** Light v. West, [1926] 2 K. B. 238.

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he suffers injury.—MAUSELL v. LETHBRIDGE NORTHERN IRRIGATION DISTRICT, [1925] 4 D. L. R. 70, [1925] 3 W. W. R. 202 ; *varying*, [1925] 1 W. W. R. 1017.—**CAN.**

PART II. SECT. 8.

97 i. *Ascertainment difficult. No ground for refusal to award.*] H. passed a mtge. bond over his farm, a condition being that H. would, on demand by the mtgee., pass a collateral bond over his movable property on the farm. In breach of this condition, H. sold & delivered such movables to a third party :—*Held :* although the damages, if any, were difficult to assess, the mtgee. was entitled to some damages for a wilful invasion of his rights.—CATO v. ALTON (1923), 41 N. L. R. 113. **S. AF.**

PART III. SECT. 1.

101 v. ——————.] Damages must be limited to such as arise naturally from the breach of contract or such as might reasonably be supposed to have been in the contemplation of the parties.—TORONTO HOCKEY CLUB v. ARENA GARDENS, LTD., (1924) 4 D. L. R. 384 ; 55 O. L. R. 509 ; *affd.* [1925] 1 D. L. R. 546.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

ss. *Sale of goods—Refusal to take delivery. Loss of time in urging acceptance.*]—In an action for damages for breach of contract by refusal to take delivery of goods :—*Held :* a claim for time lost in going to deft.'s residence to urge him to take delivery could not stand.—BRADLEY v. BAILEY & JASPERSON, [1923] 2 D. L. R. 504 ; 52 O. L. R. 439.—**CAN.**

sb. *Contract for work & labour. Work unperformed—Cost of performance.*]—Resp. gave appt. an option to purchase a mine. On the first instalment falling due, appt. negotiated for an extension of time for payment, which was granted by resp. on condition that appt. should do certain development work not mentioned in the option. Appt. failed to pay, & subsequently relinquished possession of the mine & surrendered the option without having done the work :—*Held :* resp. entitled to recover damages amounting to the cost of the work.—CUNNINGHAM v. INSINGER, [1924] 2 D. L. R. 432 ; [1924] S. C. R. 8. **CAN.**

PART III. SECT. 2, SUB-SECT. 3.

147 i. *Pain & suffering.*]—In an action for damages for personal injuries arising from negligence :—*Held :* items which should go to make up pltf.'s damages were *inter alia* a sum, not to compensate for, but to represent the inconvenience of his condition, & his pain & suffering, past & future.—COSGROVE v. CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818 ; 3 W. W. R. 1152.—**CAN.**

149 i. —— *Nervous shock. Actual impact.*]—Damages claimed for nervous shock, as a result of an accident arising from negligence, cannot be recovered where the nervous shock produces only a mental disturbance unaccompanied by any actual physical injury. If impact is not necessary, it is a question of fact in each case whether or not pltf. sustained physical injury & whether such injury was the natural & reasonable result of deft.'s negligence.—HOGAN v. R., [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

149 ii. ——————.] Damages cannot be recovered for nervous shock unaccompanied by any physical impact.—PITMAN v. WINNIPEG ELECTRIC RY. CO., [1923] 1 D. L. R. 497 ; [1925] 1 W. W. R. 156. **CAN.**

149 iii. —— —— *False statement.* Deft. falsely stated that pltf.'s son had hanged himself. The report was told to pltf., who, believing it, suffered a violent shock & became ill :—*Held :* the damage was the natural & probable cause of deft.'s act, & pltf. had a good cause of action.—BRUNSKILL v. CANADIAN, [1922] 2 W. W. R. 238 ; 65 D. L. R. 627 ; 15 Sask. L. R. 155 ; *affd* 61 D. L. R. 494.—**CAN.**

152 i. *Loss of or injury to property—Collision at sea—Loss of musical manuscripts.*]—In an action of damages against steamship owners, arising out of the sinking of one of their ships, pursuer claimed £15,000 in respect of the loss of certain music & orchestral settings in manuscript used by a concert party of which she was manager. She averred that the lost manuscripts were the sole copies of the compositions in question, & that she had the sole right to publish, perform, or issue mechanical reproductions, & to obtain copyright thereof. The compositions had cost pursuer about £2,000, but she averred that, through her concert party, they had acquired a reputation among the public which had greatly enhanced their value, & she further averred that she would have made substantial profits from the lost music in respect of copyright royalties, publication & sale, & disposal of performing & mechanical rights, apart from the use of it by her concert party :—*Held :* (1) pursuer's averments as to loss of contingent profits from copyright royalties, publication & sale, & disposal of performing & mechanical rights, were irrelevant, (2) the measure of her damages in respect of the lost music was the cost of its replacement as nearly as might be, ascertained either by the market price of actual replacement or by consideration of the compensation which would have to be paid to composers of music of the class to which the lost compositions belonged.—BEAVIS v. CLAN LINE STEAMERS, LTD., [1926] S. C. 215. **SCOT.**

ad. *Loss of earning power. Physical or mental.*] In an action for damages for personal injuries arising from negligence :—*Held :* items which should go to make up pltf.'s damages were *inter alia* a sum to compensate for loss of earning power by reason of physical injury & any incidental mental injury.—COSGROVE v. CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818 ; 3 W. W. R. 1152. **CAN.**

af. *Loss of time. Injury in motor-car collision.*] In an action for damages for injuries arising out of a motor collision, where it was found that the accident was caused by pltf.'s negligence :—*Held :* damages should be given deft. for loss of time, repairs to the car & costs.—TILMAN v. MCKENZIE, [1923] 1 D. L. R. 1169. **CAN.**

182. *Add. Annotation :* —**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

194. *Add. Annotation :* —**Mentd.** Verelst's Administratrix *v.* Motor Union Insce., [1925] 2 K. B. 137.

212. *Add. Annotation :* **Mentd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.

214. *Add. Annotations :* —**Folld.** Bennett *v.* Kreeger (1925), 41 T. L. R. 609. **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Hall *v.* Pim (1926), 32 Com. Cas. 46.

215. *Add. Annotations :* —**Folld.** Bennett *v.* Kreeger (1925), 41 T. L. R. 609. **Consd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

215a. .....] —Pltfs. bought a coat with fur collar attached, for re-sale, from deft. & sold it to a customer. Owing to the colouring matter with which the fur was dyed, the customer contracted a skin disease & brought an action against pltfs., claiming damages. Pltfs. informed deft. thereof & requested him to undertake the defence of the action. Deft. denied liability but never suggested that pltfs. had no answer to the action, with the result that pltfs. defended the action & a jury awarded the customer damages for her suffering, & pltfs. had to pay the costs of the action :—*Held :* pltfs. were entitled to recover from deft. the damages so awarded, together with the customer's taxed costs of the action & their own costs of defending the action as between solr. & client.—BENNETT (SIDNEY) Ltd. *v.* KREEGER (1925), 41 T. L. R. 609.

217. *Add. Annotation :* **Refd.** Sheppy Glue & Chemical Works *v.* Medway River Conservators (1926), 24 L. G. R. 457.

220. *Add. Annotation :* **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

223. *Add. Annotation :* —**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

224. *Add. Annotation :* **Mentd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.

235a. —— **Costs awarded in previous proceedings, but not recovered.**]—Pltfs. sought to recover from defts., as special damage, the costs which they themselves had incurred in previous litigation in which they were defts. Pltfs. in the present action sent a motor lorry to be overhauled by defts. The repairs were carried out & the lorry was returned. Very shortly afterwards, while the lorry was in use on the highway, one of the wheels came off & damaged the van of pltf. in the previous litigation, who brought an action in the county ct. to recover damages against present pltfs. He won the action at the hearing, but the decision was reversed on appeal. He was a man of straw & unable to pay the costs incurred. Present pltfs. sued present defts. for damages for alleged breach of contract & negligence, & a common jury found in pltfs.' favour. After argument as to the right of pltfs. to recover as special damage against defts., on account of their breach of contract & negligence, the costs of all previous litigation :—*Held :* such damage was not too remote.—BRITANNIA HYGIENIC LAUNDRY Co. *v.* THORNYCROFT & Co. (1925), 94 L. J. K. B. 858; 41 T. L. R. 667; *on appeal*, 95 L. J. K. B. 237; 135 L. T. 83; 42 T. L. R. 198.

237. *Add. Annotations :*—**Consd.** Harnett *v.* Bond, [1924] 2 K. B. 517. **Refd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

265. *Add. Annotation :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

268. *Add. Annotations :*—**Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746. **Mentd.** Harnett *v.* Fisher (1926), 135 L. R. 724.

279. *Add. Annotations :* **Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332; Smith *v.* G. W. Ry. (1926), 135 L. T. 112.

PART III. SECT. 3, SUB-SECT. 2.

ak. *Depreciation in price—Machinery components purchased by vendor to perform contract.*]—*Held :* the vendor was not entitled, as damages for breach of contract to purchase an ammonia gas compressing outfit, to a sum for loss through decrease in price of the parts purchased for the purpose of the contract, this not being a loss "directly & naturally resulting in the ordinary course of events from the buyer's breach of contract," as there was nothing in the negotiations for the contract to give the purchaser to understand that the vendor would have to go into the market & buy the various parts to make up the plant.—GENERAL SUPPLY CO. OF CANADA *v.* O'NEILL MORKIN MACHINERY Co., [1923] 2 W. W. R. 923.—CAN.

al. *Loss of custom—Defective goods sold but replaced.*]—Certain goods supplied under contract not complying with the warranted description :—*Held :* it could not reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, that pltfs. were to compensate defts. for such loss of business as defts. might incur by the withdrawal of their customers on account of a few of the articles resold being defective, such articles being replaced when complaint was made.—HAMILTON GEAR & MACHINE Co. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367; 54 O. L. R. 585. **CAN.**

PART III. SECT. 3, SUB-SECT. 3.

194 i. ——— *Loss of profit.*]—W. entered into a contract to supply a paper co. with pulpwood. He had previously made a contract with M., who agreed to deliver certain pulpwood at a lower price & who was informed of the first-mentioned contract, though not of all its terms. At the end of the season M. was short of the quantity he agreed to deliver :—*Held :* W. was entitled to recover damages from M. for non-performance of his contract, & the measure of those damages was the profit W. would have made under his contract with the paper co.—MANDON *v.* WILLETS, [1923] 2 D. L. R. 964; [1923] S. C. R. 433; 2 W. W. R. 486.—CAN.

PART III. SECT. 4, SUB-SECT. 1.

p (p. 107) i. ——— ———.]—In an action for damages for breach of contract by refusal to take delivery of goods :—*Held :* a claim for expenses incurred in going to deft.'s residence to urge him to take delivery could not stand.—BRADLEY *v.* BAILEY & JARVIS, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—CAN.

k (p. 108) i. ——— ——— *Medical attendance.*]—In an action for damages for personal injuries arising from negligence :—*Held :* the items which should go to make up pltf.'s damages were (*inter alia*) medical & hospital bills. — COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—CAN.

k (p. 108) ii. ——— ——— ——— *On wife.*]—S. & his wife brought an action against deft. for damages for personal injuries. Deft. was found guilty of negligence, but the action by S. was dismissed on account of contributory negligence. The ct. awarded damages to the wife against deft. It was sought to give in evidence the wife's medical & hospital bills :—*Held :* the bills had been contracted by the wife as her husband's agent & were his liability alone.—SCOBLE *v.* WOODWARD, [1924] 1 W. W. R. 1040.—CAN.

282. *Add. Annotations :—As to* (1) **Distd.** Martin v. Stanborough (1924), 41 T. L. R. 1. **Refd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75.

288. *Add. Annotations :—***Consd.** The St. Nicolai (1925), 133 L. T. 640. **Apld.** The Mostyn, [1927] P. 25. **Refd.** British-American Tobacco Co. v. Jones (1925), 134 L. T. 405. **Mentd.** Abrahams v. MacFisheries, [1925] 2 K. B. 18.

Part IV.—Aggravation and Mitigation.

290. *Add. Annotation :—***Refd.** Martin v. Stout, [1925] A. C. 359.

298. *Add. Annotation :—***Refd.** Cohen v. Sellar, [1926] 1 K. B. 536.

301. *Add. Annotation :—***Refd.** Cohen v. Sellar, [1926] 1 K. B. 536.

341. *Add. Annotations :—***Refd.** Ellis' Trustee v. Dixon-Johnson (1924), 131 L. T. 652; **Martin v. Stout,** [1925] A. C. 359; Never-Stop Ry. (Wembley) v. British Empire Exhibition (1924) Incorporated, [1926] Ch. 877. **Mentd.** Berners v. Fleming, [1925] Ch. 264.

347. *Add. Annotation :—***Mentd.** Black v. Admiralty Comrs., [1924] 1 K. B. 661.

352. *Add. Annotation :—***Refd.** Martin v. Stout, [1925] A. C. 359.

356. *Add. Annotation :* **Refd.** Ellis' Trustee v. Dixon-Johnson (1924), 131 L. T. 652.

Part V.—Measure of Damages.

393. For the cross-reference following this case, "**As to interest under Civil Procedure Act, 1833 (c. 42), s. 28, & damages in lieu of such interest.**]—*See* MONEY & MONEY LENDING," read "As to interest under Civil Procedure Act, 1833 (c. 42), s. 28, & damages in lieu of such interest, *see* MONEY & MONEY-LENDING."

408a. Option to purchase—Profit on resale lost by improper withdrawal.]—Pltf., having an option from deft. to purchase a freehold house for £1,000, agreed to sell the property to S. for £4,500, & then wrote accepting deft.'s offer to sell the house. In the meantime deft. had sold the property to B. for £4,000: *Held:* as specific performance of the contract was impossible by reason of deft.'s own act, pltf. was entitled to recover from deft. as damages £500, the difference between the price at which the property was offered to pltf. & that at which pltf. contracted to sell it.—GOREIN v. HOULDER (1920), 90 L. J. Ch. 488; 124 L. T. 145.

412a. Continuation of contract depending on third party.] Defts. agreed in writing to purchase from pltfs. all the stores that they required in the United Kingdom for their vessels,

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PART IV. SECT. 2, SUB-SECT. 1.—B.

341 x. ——.]—CANADIAN FLEXIBLE SKATE CO., LTD. v. MONARCH BRASS MANUFACTURING CO., LTD., [1925] 2 D. L. R. 387; 56 O. L. R. 362.—CAN.

352 i. *Sale of goods—Refusal to accept.*]—Unless a purchaser has by the contract of sale a right to repudiate, he cannot repudiate the sale. If he does so, the vendor may sue the purchaser for the price, or re-sell the article; & if by such sale he incurs a loss, then the purchaser must make it good. But the vendor must take into consideration such payments as the purchaser may have made on account.—FOSTER v. HEINTZMAN & Co., [1923] 4 D. L. R. 166.—CAN.

352 ii. ——.]—BRADLEY v. BAILEY & JAMIESON, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—CAN.

354 i. —— *Anticipatory breach.*]—Where there had been a breach of contract by defts.:—*Held:* pltfs. were entitled to nominal damages only, as when pltfs. found that defts. would not carry out the contract, they should have gone into the market & done the best they could with a similar contract.—CAMPBELL v. MAHLER (1919), 43 O. L. R. 395; 14 O. W. N. 345; *affd.* 15 O. W. N. 329.—CAN.

xiii. —— *Trouble & risk attending performance of contract.*]—In allowing damages for wrongful repudiation of a contract to accept delivery of poles not yet cut:—*Held:* there should be taken into consideration the risks of disappointment & difficulty in cutting & delivery that might arise from unexpected sources; & an allowance in reduction of damages should be made for the release from the care, trouble & risk attending a full execution of the contract.—CONNORS v. MCGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289. CAN.

PART IV. SECT. 2, SUB-SECT. 2.

m i. —— *Continuing contract with doctor.*]—Where a person has a contract with a doctor whereunder he is entitled to the doctor's services when they are required as a result of disease, accident or other causes, he cannot, in an action for damages for personal injuries, recover as damages the amount which such services would have cost had he not entered into such contract.—TAYLOR v. TURNER, [1925] 3 D. L. R. 574; [1925] 2 W. W. R. 490. CAN.

PART IV. SECT. 3.

q i. —— *Conversion—Onus of proof.*]—Where it was found that there was no authority in deft. bank to sell shares pledged as collateral security without judicial process:—*Held:* as to damages, the burden was on the bank to show it got full value for the shares.—THOMPSON v. DOMINION BANK, [1924] 3 D. L. R. 667; 2 W. W. R. 931.—CAN.

PART V. SECT. 1, SUB-SECT. 1.

330 xi. ——.]—In an action for damages for breach of contract, the measure of damage is the estimated loss directly & naturally resulting from the breach thereof.—HATFIELD & Co. v. CROSSETT, (1922), 50 N. B. R. 456. CAN.

330 xii. ——.]—In an action for damages for non-acceptance of goods, the measure of damages is the estimated loss directly & naturally resulting in the ordinary course of events from the buyer's breach of contract.—RECORD FOUNDRY & MACHINE CO. v. GAMSON, [1923] 2 D. L. R. 142; 50 N. S. R. 110. CAN.

330 xiii. —— *Goods manufactured or partly manufactured.*]—In respect of goods manufactured or partly manufactured & ready or partly ready for delivery, before defts. repudiated their contract:—*Held:* pltfs. were entitled to recover, as damages for breach of contract, a sum equal to the contract price of the finished or partly finished goods, less their value at the time of or within a reasonable time of the breach.—HAMILTON GEAR & MACHINE CO. v. LEWIS BROTHERS, [1924] 3 D. L. R. 367; 24 O. L. R. 382.—CAN.

xiv. *Consignment of wheat for sale—Failure to sell.*]—Where grain is consigned for sale & the consignee is instructed to sell it as soon as it is unloaded, if the price be then a certain figure or better, but he neglects to carry out such instructions, the consignor is entitled in damages to the difference between the price at the time of unloading & the lower price on the day when he learns that the grain has not been sold, even though he does not immediately notify the consignee that his instructions have not been carried out.—PARADIS v. FEDERAL GRAIN CO., LTD., [1923] 2 W. W. R. 164.—CAN.

pltfs.' profits on the net price invoiced by the manufacturers to pltfs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pltfs. for five months defts. repudiated it :— *Held :* as the continuation of the agreement between pltfs. & defts. for more than six months depended on the volition of a third party, & as the agreement contained nothing to prevent defts. from buying their stores outside the United Kingdom, pltfs. were entitled only to damages in respect of a period of one month.—FRANCO-BRITISH SHIP STORE CO., LTD. *v.* COMPAGNIE DES CHARGEURS FRANÇAISE (1926), 42 T. L. R. 735.

420. *Add. Annotation :*—**Mentd.** Sorrell *v.* Smith, [1925] A. C. 700.

Part VI.—Liquidated Damages or Penalty.

424. *Add. Annotation : Generally*, **Refd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637.

Part VII.—Pleading, Proof and Assessment.

561. *Add. Annotation :* **Mentd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

574a. **Contingent damages.**]—When a verdict is found for deft. upon an issue which bars the action, the jury cannot assess contingent damages for pltf., without the assent of deft. NEWTON *v.* HARLAND (1840), 1 Man. & G. 644 ; 1 Scott, N. R. 474 ; 2 Jur. 350 ; 133 E. R. 490.

Annotations : **Mentd.** Harvey *v.* Bridges (1845), 3 Dow. & L. 55 ; Wright *v.* Burroughes (1846), 3 C. B. 685 ; Davis *v.* Burrell (1851), 10 C. B. 821 ; Delaney *v.* Fox (1856), 1 C. B. N. S. 166 ; Carter *v.* Hughes (1858), 2 H. & N. 744 ; Pollen *v.* Brewer (1859), 1 L. T. 9 ; Accidental Death Insce. *v.* Mackenzie (1861), 5 L. T. 20 ; Blades *v.* Higgs (1861), 10 C. B. N. S. 713 ; Telford *v.* Laws (1874), 31 L. T. 90 ; Beddall *v.* Maitland (1881), 17 Ch. D. 174 ; Eldridge *v.* Hawker (1881), 50 L. J. Ch. 577 ; Edwick *v.* Hawkes (1881), 18 Ch. D. 199 ; Jones *v.* Foley (1891), 60 L. J. Q. B. 461 ; Hemmings *v.* Stoke Poges Golf Club, [1920] 1 K. B. 720.

594. *Add. Annotation :* —**Refd.** Martin *v.* Stout, [1925] A. C. 359.

598. *Annotation :* — For "**Refd.** S.S. Celia *v.* S.S. Volturno, [1921] 2 A. C. 544," read "**Expld.** S.S. Celia *v.* S.S. Volturno, [1921] 2 A. C. 544."

601. *Add. Annotation :* —**N.F.** Peyrac *v.* Wilkinson, [1924] 2 K. B. 166.

602. *Add. Annotation :* —**Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

PART V. SECT. 1, SUB-SECT. 2.

414 ii. *Reed.* on other grounds, Q. B. 15 K. B. 11 ; [1907] A. C. 454.

PART VI. SECT. 1, SUB-SECT. 2.

424 vii.] A rate of damages provided for in a contract between a co-operative co. & a grower of fruits & vegetables, under which the latter agreed to deliver all his products to the co. to be marketed by it, for the breach thereof, *Held* : to be liquidated damages & not a penalty. ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871 ; [1924] 1 W. W. R. 306 ; 34 B. C. R. 337. — **CAN.**

PART VI. SECT. 1, SUB-SECT. 3.

442 i.] *Onus of disproof.*] If the sum mentioned in a bond is expressed to be a penalty, the onus of showing that it was intended as liquidated damages is on the person asserting it. R. (A.-G. OF CANADA) *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1920] 2 W. W. R. 83. — **CAN.**

448 iii.] Where a sum is stipulated to be paid as liquidated damages, & is payable, not on the happening of a single event, but of one or more of a number of events, some of which might result in inconsiderable damage, the ct. may decline to construe the words "liquidated damages" according to their ordinary meaning & may treat such a sum as a penalty. — SHATILLA *v.* FEINSTEIN, [1923] 3 D. L. R. 1035 ; 16 Sask. L. R. 141 ; [1923] 1 W. W. R. 1474. — **CAN.**

453 iv.] *Held :* having regard to the language in a clause of a contract of service, fixing a sum as liquidated damages for violation by deft. of any or all of the provisions of the contract, the sum fixed was not in the nature of a penalty.— DOMINION ART CO., LTD. *v.* MURPHY (1923), 54 O. L. R. 332. — **CAN.**

PART VI. SECT. 1, SUB-SECT. 5.

471 ii.] The sum mentioned in a bond given under Canada Grain Act by one licensed to operate a country elevator :— *Held :* to be a penalty & only recoverable to the extent of the actual loss shown, there being no evidence to show it was intended as liquidated damages, & because the conditions of the bond consisted in the performance of many acts, some of which might be of great & others of trifling importance.— R. (A.-G. OF CANADA) *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1920] 2 W. W. R. 83. — **CAN.**

PART VI. SECT. 1, SUB-SECT. 7.

529 iii.] Pltf. gave deft. the exclusive agency for six months for the sale of certain land. Deft. covenanted that if he failed to effect a sale of 1,000 acres in the first six months he would pay as liquidated damages an amount equal to $2 per acre for each acre of the 1,000 acres unsold. Deft. failed to effect a sale : — *Held :* not a penalty, but liquidated damages arising on proof of failure to make the sales, without having to show actual loss.— NORTHERN TRUSTS CO. *v.* RASMUSSEN, [1924] 2 W. W. R. 1015.— **CAN.**

PART VII. SECT. 1.

549 xv.] To recover special damages, a pltf. must expressly claim them in his pleadings & prove them strictly at the trial.— CARROLL *v.* BAER, [1924] 2 D. L. R. 452 ; 1 W. W. R. 1249 ; 18 Sask. L. R. 292. — **CAN.**

PART VII. SECT. 2.

559 i. *Necessity for proof of special damage.*] On a claim for damages for personal injuries, pltf. cannot claim for special damages for nursing where he fails to show that he has either paid or is under any legal obligation to pay for the nursing done ; the fact that he intends to pay a sum to his nurse is not sufficient.—CARROLL *v.* BAER, [1924] 2 D. L. R. 452 ; 1 W. W. R. 1249 ; 18 Sask. L. R. 292. — **CAN.**

PART VII. SECT. 3, SUB-SECT. 3.—B.

598 i. *Amount due in foreign currency —Date of judgment sued on.*]— Where deft. in a suit in Bombay contended that the rate of exchange should be that on the day on which the ct. pronounced judgment :—*Held :* the rate to be taken was that prevailing on the day judgment was given in the High Ct. in England, which gave pltf. the cause of action for the suit in Bombay. —MADHAVJI VIKRAM *v.* RAMNIKLAL VADILAL (1921), I. L. R. 47 Bom. 457.— **IND.**

604. *Add. Annotation :*—**Reld.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

611. *Add. Annotation :*—**Folld.** Peyrac *v.* Wilkinson, [1924] 2 K. B. 166.

612. For the existing paragraph in original volume, substitute the following paragraph :—

—— ——.]—In an action in this country for a debt payable in a foreign currency the debt must be converted into English currency at the rate of exchange prevailing at the date when the debt became due & payable, & not at the rate of exchange prevailing at the date of judgment.—PEYRAC *v.* WILKINSON, [1924] 2 K. B. 166; 93 L. J. K. B. 121; 130 L. T. 511.

613. *Citations :*—Add "15 Asp. M. L. C. 570." Delete "*revsg.* S. C. *sub nom.* DREYFUS & Co. *v.* ATLANTIC SHIPPING & TRADING Co. (1921), 37 T. L. R. 417, C. A."

Annotations :—Delete "**Mentd.** Czarnikow *v.* Roth, Schmidt (1922), 92 L. J. K. B. 81; Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797; Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690."

614. *Add. Annotation :*—**Consd.** Anderson *v.* Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557.

615. After this case add "*See, also,* INSURANCE, Vol. XXIX., p. 380, No. 3104."

618. *Add. Citations :*—93 L. J. Ch. 263; 130 L. T. 109.

Add. Annotations :—*As to* (1) **Consd.** Anderson *v.* Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557. *Generally,* **Reld.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

626. *Add. Annotation :* **Reld.** The Koursk, [1924] P. 140.

638. *Add. Annotation :* —**Consd.** The Koursk, [1924] P. 140.

648. *Add. Annotation :* **Consd.** Wing Lee *v.* Low, [1925] A. C. 810.

753. *Add. Annotation :* **Mentd.** Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305.

830. After this case add "*See, also,* JURIES, Vol. XXX., pp. 215, 216."

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603 iii. —— ——.] —In cases of breach of contract, the date on which the rate of exchange is to be taken for the purpose of converting one set of currency into another is the date on which under the agreement the money was to be paid & on which a breach occurred by its not being paid.—SHAKOOR & Co. *v.* FINLAY FLEMING & Co. (1923), I. L. R. 1 Ran. 339. **IND.**

PART VII. SECT. 4, SUB-SECT. 3. B. (a).

689 i. —— *Misconduct of jury.*] Where an assessment of damages is not thought to be unconscionable but only excessive, it ought to be set aside if the jury took into account something which they ought not to have taken into account & failed to take into account something which they ought to have taken into account.—OSBORNE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; [1923] 3 W. W. R. 1152. **CAN.**

692 xviii. —— ——.] In an action for damages for breach of contract, the jury awarded plff. £10 for special damages, including law costs, £230 for loss of profits, & £20 for general damages. Deft. moved for a new trial upon the ground that the award of anything more than a merely nominal sum as general damages was excessive :—*Held :* as no substantial wrong or miscarriage of justice had been occasioned, a new trial ought not to be ordered, but the judgment should stand, subject to plff. consenting to the elimination of the amount awarded as general damages.—STEWART *v.* O'BRIEN, [1925], N. Z. L. R. 400. **N.Z.**

PART VII. SECT. 4, SUB-SECT. 3. B. (c).

748 i. *Mistake Acting upon wrong principle.*] Where a jury assessed damages on a wrong principle :—*Held :* the ct. would not set aside the verdict on the ground of excessive damage having been given.—FENERTY *v.* HALIFAX COUNTY (1858), 3 N. S. R. (2 Thom.) 412. **CAN.**

DEEDS AND OTHER INSTRUMENTS.

Part I.—Deeds.

149. *Add. Annotation :*—**Mentd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168.

166. *Add. Annotation :* — **Reld.** Humphrey & Dennan *v.* Kavanagh (1925), 41 T. L. R. 378.

194. *Add. Annotation :* — **Mentd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461

464. *Add. Annotation :*—**Apld.** *Re* Clout & Frewer's Contract, [1924] 2 Ch. 230.

470. *Add. Annotation :*—**Reld.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529.

490. *Add. Annotation :*—**Reld.** *In the Estate of* Southerden, Adams *v.* Southerden, [1925] P. 177.

Part II.—Instruments Under Hand—Non-Testamentary.

555. *Add. Annotation :* — **Consd.** Swift *v.* Board of Trade, [1925] A. C. 520.

557. *Add. Annotation :*— **Mentd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

Part III.—Interpretation of Deeds and Non-Testamentary Instruments.

587. *Add. Annotation :* — **Reld.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

592. After this case insert "*See, generally*, CONTRACT, Vol. XII., pp. 70 *et seq.*"

597. *Add. Annotation :* — **Reld.** Schiller *v.* Petersen (1924), 130 L. T. 810.

622. *Add. Annotations :* — **Apld.** The Mostyn, [1927] P. 25. **Reld.** Abrahams *v.* MacFisheries, [1925] 2 K. B. 18; British-American Tobacco Co. *v.* Jones (1925), 134 L. T. 405. **Mentd.** The St. Nicolai (1925), 133 L. T. 640.

627. *Add. Annotation :* — **Reld.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

631. *Add. Annotations :* —**Consd.** Shorwood *v.* Tucker, [1924] 2 Ch. 440. **Reld.** Batchelor *v.* Murphy (1924), 41 T. L. R. 153.

665. *Add. Annotation :*—**Apld.** Saunders *v.* Young's Brewery (1925), 42 T. L. R. 136.

679. *Add. Annotation :* —**Mentd.** Parr *v.* A.-G., [1926] A. C. 239.

697. *Add. Annotation :*—**Reld.** Samuel *v.* Dumas, [1924] A. C. 431

700. *Add. Annotation :*—**Reld.** Russell *v.* Russell, [1924] A. C. 687.

743. *Add. Annotation :*— **Reld.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

750. *Add. Annotations :*—**Reld.** *Re* Hammond, Parry *v.* Hammond, [1924] 2 Ch. 276. **Mentd.** *Re* Hack, Beadman *v.* Beadman, [1925] Ch. 633.

801. *Add. Annotation :*—**Mentd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

825. *Add. Annotations :*—**Consd.** Schiller *v.* Peter-

PART I. SECT. 5, SUB-SECT. 1.—E.

183 iii. ——— *Attestation required by statute—Deed improperly attested—Execution admitted by grantor.*]—*Held :* as the mtge. deed was not attested within Transfer of Property Act, s. 59, it was invalid in spite of the grantor's admission.—HIRA BIBI *v.* RAM HARI LAL (1925), I. R. 52 Ind. App. 362.—IND.

PART I. SECT. 6, SUB-SECT. 1.

406 iv. ——.] A deed under seal cannot bind a person who is not a party to the deed.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1923] 4 D. L. R. 543.—CAN.

PART I. SECT. 7.

425 v. ——.]—BENNETT *v.* KING, [1926] N. 50.—IR.

PART I. SECT. 8, SUB-SECT. 5.

464 vi. ——.]—Under an agreement between pltf. & defts. for the sale of a business the latter undertook to incorporate a co. & to assume & pay the amount due on a chattel mtge. in carrying out the agreement pltf. signed what he thought was a mere transfer of the business to the co., but which was in fact a new agreement which expressly released defts. from its obligation to pay off the chattel mtge. There was no evidence of anything being said to or by pltf. with respect to such release, & the evidence as to whether he read the new agreement over before signing it was conflicting :—*Held :* the release had been fraudulently inserted, & pltf. was entitled to be indemnified by defts. against his liability on the mtge.—JACK *v.* NANOOSE WELLINGTON COLLIERIES, LTD., [1925] 3 D. L. R. 398; [1925] 2 W. W. R. 267; 35 B. C. R. 295.—CAN.

PART I. SECT. 8, SUB-SECT. 6.

484 vi. ——.]—Under an agreement between pltf. & defts. for the sale of a business the latter undertook to incorporate a co. & to assume & pay the amount due on a chattel mtge. in carrying out the agreement pltf. signed what he thought was a mere transfer of the business to the co., but which was in fact a new agreement which expressly released defts. from its obligation to pay off the chattel mtge. There was no evidence of anything being said to or by pltf. with respect to such release, & the evidence as to whether he read the new agreement over before signing it was conflicting :—*Held :* the release had been fraudulently inserted, & pltf. was entitled to be indemnified by defts. against his liability on the mtge.—JACK *v.* NANOOSE WELLINGTON COLLIERIES, LTD., [1925] 3 D. L. R. 398; [1925] 2 W. W. R. 267; 35 B. C. R. 295.—CAN.

PART III. SECT. 1.

20. *Parent & child bearing same name—No addition of "senior" or "junior"—Presumption in favour of parent.*]—NEW BRUNSWICK POWER CO. *v.* PRICE HATT (1924), 52 N. B. R. 1.—CAN.

PART III. SECT. 2, SUB-SECT. 2.—A.

632 ii. ——.]—MANUFACTURERS LIFE INSURANCE CO. *v.* SWINNEY, [1925] 2 D. L. R. 503.—CAN.

PART III. SECT. 2, SUB-SECT. 2.—B.

705 xi. ——.]—In deciding whether a given transaction is an out & out sale with a condition for re-purchase or a mtge. by conditional sale, it is the intention of the parties at the time of entering into the transaction which must be regarded. That intention must be gathered from the terms of the deed itself & the surrounding circumstances.—BISHAWRAD *v.* MUKAMMAD (1923), I. L. R. 45 All. 58.—IND.

PART III. SECT. 3, SUB-SECT. 4.

716 xxi. ——.]—When a person agrees to purchase, he impliedly covenants to pay in the absence of terms exhibiting a different intention, but the whole document must be construed & may show that such implication is not to be drawn.—GRANT'S MCGILORY, LTD. *v.* DOMK LUMBER CO., LTD. & THOMPSON, [1923] 2 D. L. R. 144; 1 W. W. R. 969.—CAN.

sen, [1924] 1 Ch. 304. **Reld.** Phipps v. Rogers, [1925] 1 K. B. 14.

842. *Add. Annotation* :—**Reld.** Brakspear v. Barton, [1924] 2 K. B. 88.

853. *Add. Annotation* :—**Reld.** *Re* Whitrod, Burrows v. Base, [1926] Ch. 118.

882. *Add. Annotation* :—**Reld.** United States Shipping Board v. Strick, [1926] A. C. 545.

895. *Add. Annotation* :—**Reld.** Wilston S.S. Co. v. Weir (1925), 31 Com. Cas. 111.

900. *Add. Annotations* :—**Reld.** Jones v. Oceanic Steam Navigation Co., [1924] 2 K. B. 730. **Mentd.** Pailin v. Northern Employers' Mutual Indemnity Co., [1925] 2 K. B. 73.

981. *Add. Annotation* :—*Generally*. **Reld.** Berners v. Fleming, [1925] Ch. 264.

1007. *Add. Annotation* :—**Reld.** Lowther v. Clifford (1926), 95 L. J. K. B. 576.

1031. *Add. Annotation* :—**Mentd.** Elliott v. Bax-Ironside, [1925] 2 K. B. 301.

1065. *Add. Annotation* :—**Consd.** Taylor v. British Legal Life Assce. (1925), 94 L. J. Ch. 284.

1067. *Add. Annotation* :—**Reld.** Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis, [1924] A. C. 522.

1098. *Add. Annotation* :—**Reld.** Gregg v. Richards, [1926] Ch. 521.

1101. *Add. Annotation* :—**Mentd.** Bradford v. Gammon, [1925] Ch. 132.

1106. *Add. Annotation* :—**Reld.** Gregg v. Richards, [1926] Ch. 521.

1107. *Add. Annotations* :—**Reld.** Gregg v. Richards, [1926] Ch. 521. **Mentd.** Bradbury v. English Sewing Cotton Co. (1923), 8 Tax Cas. 481; Whelan v. Henning (1924), 41 T. L. R. 141; Alianza Co. v. I. R. Comrs., [1925] A. C. 614; Foulsham v. Pickles, [1925] A. C. 458; Swedish Central Ry. v. Thompson, [1925] A. C. 495; Whitney v. I. R. Comrs. (1925), 42 T. L. R. 58; Archer-Shee v. Baker (1926), 95 L. J. K. B. 920.

1108. *Add. Annotation* :—**Mentd.** Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522.

1109. *Add. Annotations* :—**Reld.** Reed v. Page & East (1926) 42 T. L. R. 744. **Mentd.** Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis, [1924] A. C. 522.

1129. *Add. Annotation* :—**Mentd.** Biasot v. Wilkinson (1926), 42 T. L. R. 727.

1149. *Add. Annotation* :—**Mentd.** Rye v. Purcell, [1926] 1 K. B. 446.

1171. *Add. Citation* :—109 L. T. 820.

1192. *Add. Annotation* :—**Reld.** Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.

1205. *Add. Annotation* :—**Consd.** United States Shipping Board v. Bunge & Born (1924), 41 T. L. R. 73.

1224. *Add. Annotation* :—**Mentd.** Rye v. Purcell, [1926] 1 K. B. 446.

1230. *Add. Annotation* :—**Reld.** Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1233. *Add. Annotation* :—**Mentd.** Baldry v. Marshall, [1925] 1 K. B. 260.

1237. *Add. Annotation* :—**Reld.** *Re* Gardner, Ellis v. Ellis, [1924] 2 Ch. 243.

1248. *Add. Annotations* :—**Reld.** Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Mentd.** Berners v. Fleming, [1925] Ch. 264.

1322. *Add. Annotation* :—**Reld.** Nagoremull v. Triton Insce. (1921), 41 T. L. R. 168.

1327. *Add. Annotation* :—**Reld.** Cohen v. Roche (1926), 95 L. J. K. B. 915.

1354. *Add. Annotation* :—**Mentd.** Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.

1364. *Add. Annotation* :—**Consd.** Boot v. Uttoxeter U. D. C. (1924), 88 J. P. 118.

1401. *Add. Annotations* :—**Reld.** Sherwood v. Tucker, [1924] 2 Ch. 440. **Mentd.** Batchelor v. Murphy, [1925] Ch. 220.

PART III. SECT. 3, SUB-SECT. 13.—B. (b).

948 vi. ——.]—As soon as there is an adequate & sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it.—DARAPALE, ETC. v. NAZIR (1923), I. L. R. 50 Calc. 394.—IND.

PART III. SECT. 3, SUB-SECT. 14.

951 ii. ——.]—R. v. PRICE BROTHERS & Co., LTD., [1925] 3 D. L. R. 595; *revsg.*, [1924] 3 D. L. R. 817.—CAN.

PART III. SECT. 3, SUB-SECT. 16.

r i. —— *Grant of easement—Reference to plan—Plan omitted.*]—*Held*: where there was no plan, parol evidence was admissible to identify the land.—BANKS PENINSULA ELECTRIC POWER BOARD v. AKAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 850.—N.Z.

PART III. SECT. 3, SUB-SECT. 18.—A.

988 vi. ——.]—Where there are two possible interpretations of a contract & one would lead to an obvious absurdity or injustice, the other interpretation is to be accepted.—THOMPSON v. NORTH BATTLEFORD, [1924] 1 D. L. R. 139; 1 W. W. R. 51.—CAN.

PART III. SECT. 4, SUB-SECT. 1.

1146 x. —— *Blanks in printed form not filled in.*]—*Re* DOMINION & MIDLAND L. & S. Co., [1927] 1 D. L. R. 570.—CAN.

PART III. SECT. 4, SUB-SECT. 2.

1176 xxviii. ——.]—Where parties to a contract have set out its terms & conditions in writing, which is presumably intended to be a record of the transaction, the law does not permit the introduction of other terms by means of oral evidence.—STEINKE v. MATHIEU, [1923] 3 W. W. R. 493.—CAN.

1176 xxix. ——.]—Where an original agreement has complied with Stat. Frauds, evidence of an alleged parol variation of its terms is inadmissible.—HALL v. GOLLSTONE, [1923] N. Z. L. R. 916.—N.Z.

1176 xxx. ——.]—KASTER v. CHWAN, [1925] 2 D. L. R. 742; [1925] 2 W. W. R. 186; 21 Alta. L. R. 368; *revsg.*, [1923] 4 D. L. R. 491; [1925] 3 W. W. R. 610.—CAN.

1176 xxxi. ——.]—Defts. excepted to a declaration on the ground that plff. could not vary the terms of a written deed of transfer by evidence of a prior agreement, unless or until he expressly claimed a cancellation, rescission, or reformation of the deed of transfer:—*Held*: the exception should be upheld.—ADAM v. JHAVARY (1926), 46 N. L. R. 190.—S. AF.

1180 l. ——.]—*Held*: parol evidence was not admissible to contradict a statement in a document as to ownership by showing that a wife, in signing it, was acting as agent of her husband. KATZMAN v. OWNAHOME REALTY CO., [1924] 1 D. L. R. 201; [1924] S. C. R. 18.—CAN.

PART III. SECT. 4, SUB-SECT. 3.

1237 v. ——.] When the ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written. This intent must be sought in the conduct & language of the parties & the surrounding circumstances.—CONNORS v. MCGREGOR, [1924] 2 D. L. R. 80; 2 W. W. R. 294; 20 Alta. L. R. 289.—CAN.

PART III. SECT. 4, SUB-SECT. 8.—A.

1294 x. —— —— ——.]—The doctrine of *contemporanea expositio* is applied, speaking generally, only where the contract is ambiguous.—MYERS v. UNION NATURAL GAS CO. (1923), 53 O. L. R. 58.—CAN.

1296 xi. —— —— ——.]—*Re* CANADIAN NORTHERN RY. CO. & OTTAWA, [1924] 4 D. L. R. 1217; 56 O. L. R. 153.—CAN.

PART III. SECT. 4, SUB-SECT. 11.—D.

ep. *To prove illegality of consideration —Evidence inadmissible.*]—DAUPHINEE v. DAUPHINEE (1924), 57 N. S. R. 506.—CAN.

1471. *Citations :*—For the existing citations read "MILDMAY'S CASE (1584), 1 Co. Rep. 175 a; Jenk. 247; 76 E. R. 379; *sub nom.* MILDMAY *v.* STANDISH, Cro. Eliz. 34; Moore, K. B. 144."

1513. *Add. Annotation :*—**Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

1537. *Add. Annotation :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

1542. *Add. Annotation :* — **Mentd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

1562. *Add. Annotation :*— **Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1576. *Add. Annotation :* —**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

1582. *Add. Annotations :* — **Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

1583. *Add. Annotations :* — **Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

1607. *Add. Annotations :*—**Consd.** United States Shipping Board *v.* Bunge y Born Limitada Sociedad (1925), 134 L. T. 303. **Refd.** Cunard S.S. Co. *v.* Buerger (1926), 135 L. T. 494.

1628. *Add. Annotation :* —**Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1652. *Add. Annotation :* **Refd.** *Re* Carnarvon's Chesterfield S. E., *Re* Carnarvon's Highclere S. E. (1926), 70 Sol. Jo. 977.

1672. *Add. Annotation :* —**Mentd.** Samuel *v.* Dumas, [1924] A. C. 431.

1675. *Add. Annotation :* **Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43.

1694. *Add. Annotation :* **Mentd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

1709. *Add. Annotation :* —**Mentd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

1733. *Add. Annotation :* **Mentd.** *Re* Quintin Dick, Clonmurry *v.* Fenton, [1926] Ch. 992.

1735a. **Incorporation of guarantee clause—Identity of clause uncertain—Clause not available.**]—Pltfs., a ship-repairing co., requiring a new intermediate pressure cylinder for the engines of a steamer which they had contracted to repair, obtained a quotation from defts., marine engineers. At the head of defts.' letter was a printed notice, "All offers are subject to our usual strike & guarantee clauses, accidents, etc." Pltfs. ordered the cylinder, but after it had been delivered & fitted it was found to be defective. A new cylinder was subsequently supplied by defts., but owing to the delay pltfs. were not able to complete the repairs in accordance with their contract with the shipowners & had to pay them damages. In an action to recover the amount of the damages defts. alleged that the contract for the supply of the cylinder was made subject to "our usual" guarantee clause & that their guarantee clause provided (*inter alia*) that "the contractors shall not in any case be liable for any detention of the vessel or other consequential damages howsoever arising":—*Held :* as it was not clear what guarantee clause was incorporated, since the clause suggested by defts. was the clause in their usual engine agreement which was drawn to meet the case of engines being supplied to a shipowner & not to meet such a case as the present, & as it was not proved that defts. had made it clear that they intended to limit their liability, pltfs. were entitled to recover.—ALISON (J. GORDON) & CO., LTD. *v.* WALLSEND SLIPWAY & ENGINEERING CO., LTD. (1926), 43 T. L. R. 104.

1744. *Add. Annotation :*—**Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

1944a. **Limitation to commence after existing lease—Lease void.**]—A conveyance which is limited to commence after an existing lease takes effect presently, if that lease is void.—BLACKMORE *v.* CUMBERFORD (1680), 1 Freem. K. B. 527; 89 E. R. 395.

Part IV.—Covenants and Provisoes.

2101. *Add. Annotation :*—**Mentd.** Civil Service Co-op. Soc. *v.* McGrigor's Trustee, [1923] 2 Ch. 347.

2111. *Add. Annotation :* —**Refd.** Wise *v.* Whitburn, [1924] 1 Ch. 460.

2125. *Add. Annotation :*—**Mentd.** Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609.

2131. *Add. Annotation :*—**Consd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

PART III. SECT. 4, SUB-SECT. 11.—G. (a).

h i. ——.)—McLEAN *v.* JOHNSON, [1923] 4 D. L. R. 178; 32 B. C. R. 495; [1923] 3 W. W. R. 913.—CAN.

h ii. —— *(Contemporary oral agreement acted on by parties.)*—In an action for foreclosure & sale on default in payment of principal, according to the written terms of a mtge.:—*Held :* an oral agreement that payment would not be exacted until a subsequent date could be proven & enforced.—JOHNSON INVESTMENTS, LTD. *v.* FAGERTINE, [1923] 3 D. L. R. 985; [1923] 3 W. W. R. 736.—CAN.

PART III. SECT. 4, SUB-SECT. 11.—G. (b).

1873 i. *Evidence admissible—Proof of consideration.*)—Regard may be had to a collateral oral agreement to show that a deed is in fact founded on a valuable consideration.—KIRK *v.* GREAVES, [1924] N. Z. L. R. 260.—N.Z.

m i. —— —— ——.)—Where a complete agreement was contained in a written contract & it satisfied Stat. Frauds:—*Held :* an oral arrangement as to remuneration was a separate collateral agreement.—PERRY *v.* EARLEY, [1924] 4 D. L. R. 1280; 3 W. W. R. 674.—CAN.

m ii. —— —— ——.)—When the ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written.—CONNORS *v.* McGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—CAN.

PART III. SECT. 5, SUB-SECT. 4.

r i. —— *Meaning to words given though grammatical construction faulty.*)—*Re* DEMPSEY & MIDLAND L. & S. Co., [1925] 4 D. L. R. 570.—CAN.

PART III. SECT. 8, SUB-SECT. 1.—A. (a).

1737 i. *General rule.*)—If both the recitals & the operative part of a deed are clear & unambiguous, but are inconsistent with each other, the operative part must prevail.—HUSSAIN *v.* CHAN CHONG (1924), I. L. R. 3 Ran. 53.—IND.

DEPENDENCIES

Including Dominions, Dependencies, Colonies and British Possessions.

Part I.—In General.

3. *Add. Annotation :*—**Refd.** Sobhuza II. v. Miller, [1926] A. C. 518.

7. *Add. Annotation :*—**Refd.** Sobhuza II. v. Miller, [1926] A. C. 518.

10a. —— ——,]—An extension of British jurisdiction in a British protectorate by Orders in Council may be referred to an exercise of power by an act of State, unchallengeable in any British ct., or to statutory powers given by Foreign Jurisdiction Act, 1890 (c. 37), under which the jurisdiction acquired by the Crown in a protected country is indistinguishable in legal effect from that acquired by conquest. The Crown cannot, except by statute, deprive itself of freedom to make Orders in Council, even such as are inconsistent with previous Orders.

Before the conquest & annexation of the South African Republic Swaziland was an independent native State, treated as a protected dependency of that Republic, by which it was administered under a Convention made in 1894 between Great Britain & the Republic. The Convention provided for the preservation of native law, & the agricultural & grazing rights of the natives. The annexation did not extend to Swaziland. Subsequently under Orders in Council certain lands in Swaziland were exproprietated to the Crown, to the extinguishment of the use & occupation of them by natives under native law, certain lands being allotted exclusively to the natives: *Held:* the Orders in Council were effective, even if they were not within the powers recognised by the Convention.—Sobhuza II. v. Miller, [1926] A. C. 518; 95 L. J. P. C. 137; 135 L. T. 215; 42 T. L. R. 446, P. C.

13. *Add. Annotations :* **Refd.** Netherlands-American Steam Navigation Co. v. Procurator-General (1925), 42 T. L. R. 81. **Mentd.** Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271.

Part II.—Colonial and Dominion Government.

14. *Add. Annotation :—Generally*, **Mentd.** A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328.

20a. Power of expropriation in mandated territory.] — By the Mandate for Palestine, dated July 24, 1922, the Council of the League of Nations, acting under art. 22 of the Covenant of the League, entrusted to Great Britain the administration of Palestine. Art. 2 of the Mandate provided that Great Britain should be responsible for "safeguarding the civil & religious rights of the inhabitants of Palestine irrespective of race & religion." In 1923 an Order in Council authorised the High Comr. for Palestine to promulgate such ordinances as might be necessary for the peace, good order, & government of the country, & were not inconsistent with the Mandate. The High Comr. promulgated an ordinance expropriating certain springs for the purpose of supplying water to Jerusalem, with certain provisions for compensation. In an action by the owners of the springs the Supreme Ct., sitting as a ct. of first instance, held that the ordinance was *ultra vires*, on the ground that it was inconsistent with the Mandate in that the provisions for compensation were inadequate. Special leave to appeal was granted, all questions of jurisdiction being left open. An Order in Council had made provision for appeals to the Privy Council, but only from orders of the Supreme Ct. sitting as a Ct. of Appeal: *Held:* (1) the appeal was competent, since the jurisdiction under the Mandate was jurisdiction in a foreign country within the description in the preamble to Foreign Jurisdiction Act, 1890 (c. 37); (2) it was the right & duty of the ct. to consider whether the ordinance was consistent with the Mandate, but art. 2 had been misconstrued, & the ordinance was valid; (3) art. 2 did not mean that in every case of expropriation for a public purpose full compensation must be given. Natural justice required that in the absence of exceptional circumstances, fair provision should be made for compensation, but that depended not upon civil right, but upon the principles of sound administration, & it was not within the province of the ct. to consider whether an ordinance was within those principles. Further, the ordinance did make adequate provision for compensation. Jerusalem-Jaffa District Governor v. Suleiman Murra, [1926] A. C. 321; 95 L. J. P. C. 46; 134 L. T. 609; 42 T. L. R. 200, P. C.

23. *Add. Annotation :*—**Consd.** A.-G. v. G. S. & W. Ry. of Ireland, [1925] A. C. 754.

24a. —— Grant of proprietary right in river— Canada.]—By letters patent issued by the Lieutenant-Governor of Quebec in 1910 under Companies Act of that province, applt. co. was incorporated for the purpose of carrying on the business of producers of electricity, &

PART II. SECT. 2, SUB-SECT. 1.—A. 1 (p. 419) 1. —— *Proclamation fixing importation duties.*]—The Governor-General purporting to act under Act 35 of 1922, s. 5, issued two proclamations, the first fixing an exchange duty for asbestos cement sheets imported from Belgium & the second confining the first to certain cheaper kinds of asbestos sheets:—*Held:* the proclamations were *intra vires* the Governor-General.—Customs Comr. v. Ailton Timber Co., Ltd., [1926] App. D. 1—S. AF.

with power to construct & maintain dams in a river of the province within certain limits, after having acquired from the riparian proprietors the properties necessary for that purpose. In 1923 applts. not having then constructed any works, the provincial Govt. granted to resps. a lease of the water power & bed of the river within limits which overlapped those referred to in applts.' letters patent. Applts. brought an action against resps., claiming a declaration that applts. had a vested right in the river to construct dams, & an injunction:—*Held:* the action failed, since the letters patent contained no grant of a proprietary right in, or power to take possession of, any part of the river or its bed.— UNITED MANUFACTURING CO. *v.* ST. MAURICE POWER CO., [1926] A. C. 708; 95 L. J. P. C. 149; 135 L. T. 389; 42 T. L. R. 495, P. C.

62. *Add. Annotation:*—**Mentd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

68. *Add. Annotation:*—*As to* (1) **Reld.** The Fagernes, [1926] P. 185.

90. *Add. Annotation:*—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396.

91a. **Enactment preventing King in Council from granting leave to appeal—Criminal case.**]—Sect. 1025 of the Criminal Code of Canada, if & so far as it is intended to prevent the King in Council from giving effective leave to appeal against an order of a Canadian ct. in a criminal case, is invalid. The legislative authority of the Parliament of Canada as to criminal law & procedure, under British North America Act, 1867 (c. 3), s. 91, is confined to action to be taken in Canada. Further, an enactment annulling the royal prerogative to grant special leave to appeal would be inconsistent with Judicial Committee Acts, 1833 (c. 41) & 1844 (c. 69), & would be invalid under Colonial Laws Validity Act, 1865 (c. 63), s. 2. The royal assent to the Criminal Code could not give validity to an enactment which was void by Imperial statute; exclusion of the prerogative could be accomplished only by an Imperial statute.

According to the well-settled practice of the Judicial Committee His Majesty is advised to intervene in a criminal case only if it is shown that, by a disregard of the power of legal process, or by some violation of natural justice, or otherwise, substantial & grave injustice has been done.

Applt. was convicted in Alberta of an offence under Govt. Liquor Control Act of Alberta, which did not incorporate sect. 1025 of the Criminal Code of Canada, & of an offence under Canada Temperance Act, R. S. Can., 1906 (c. 152). For each offence he was sentenced to a fine, & in default imprisonment. The Supreme Ct. of Alberta, rejecting contentions as to the construction & invalidity of the material sects., affirmed the convictions, but gave leave to appeal to the Privy Council. The Crown petitioned the Judicial Committee to quash the appeals as incompetent, having regard to sect. 1025. Applt. petitioned for special leave to appeal. The petitions were heard with the appeals:—*Held:* (1) each appeal was in a "criminal case" to which sect. 1025 applied, so far as it was valid; (2) in the absence of argument to the contrary, sect. 1025 prevented the Appellate Div. from giving effective leave to appeal; (3) sect. 1025 did not exclude the prerogative right to give leave to appeal; (4) the cases were clearly not within the category of the exceptional cases in which special leave to appeal was advised in a criminal matter.—NADAN *v.* R., [1926] A. C. 482; 95 L. J. P. C. 114; 134 L. T. 706; 42 T. L. R. 356; 28 Cox, C. C. 167, P. C.

96. *Add. Annotation:*—**Reld.** Lord's Day Alliance of Canada *v.* A.-G. for Manitoba, [1925] A. C. 384.

97. *Add. Annotations:*—**Apld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328. **Distd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396.

98. For the paragraph in the original volume substitute the following paragraph:—

Bona vacantia—Right of Crown in right of province.]—*Bona vacantia* are "royalties" within British North America Act, 1867 (c. 3), s. 109, & accordingly belong to the province in which they are situate or arise, & not to the Dominion. The word "royalties" is used in the sect. as the equivalent of *jura regalia*. Its meaning is not limited by its association with the words "lands, mines, minerals."—R. *v.* A.-G. OF BRITISH COLUMBIA, [1924] A. C. 213; 93 L. J. P. C. 76; 130 L. T. 231; 40 T. L. R. 13; 68 Sol. Jo. 138, P. C.

101. *Add. Annotations:*—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396. **Reld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328.

PART II. SECT. 3, SUB-SECT. 2.—A.

99. *Disqualified member voting—Liability to penalties.*]—Since Constitution Act, R. S. B. C., 1924 (c. 45), imposes but one penalty for each day on which a disqualified person sits & votes as a member of the Legislative Assembly, there is but one cause of action for each such day, & where an action is brought on such cause of action that penalty, if recovered, belongs to pltf. therein, who thereby attaches or appropriates it to himself. Such action, even though dismissed, is a bar to a subsequent action for the same penalty, unless such prior action was collusive.—KEMP *v.* COLLEY, [1925] 4 D. L. R. 229; [1925] 3 W. W. R. 250.—CAN.

PART II. SECT. 3, SUB-SECT. 4.—A. (a).

99 i. Bona vacantia—*Right of Crown in right of Dominion—Saskatchewan.*]—In 1916, H. domiciled in the province of S. died, leaving no heirs or other persons legally entitled to his estate. Both the Dominion & the province claimed the estate as *bona vacantia* by right of escheat:—*Held:* as the province of S. was not at the date of its establishment owner of the lands, nor had any vested rights in any duties or revenues in respect to the lands from which the province was carved, differing in this respect from the original provinces of Confederation, B. N. A. Act, ss. 102, 109 did not apply, notwithstanding Saskatchewan Act, s. 3, & in any event, these sects. did not purport to transfer any "property" or rights to the provinces.—R. *v.* WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN & SMYLIE (1921), 21 Exch. C. R. 1; 59 D. L. R. 597.—CAN.

sr. "Royalties" — British North America Act, 1867, s. 109—Construction.]—"Royalties" in this sect. does not embrace all kinds of royalties, but is limited in its meaning by the text to such as are connected with lands, mines & minerals; such as (*inter alia*) the right to *bona vacantia* & of escheat arising by reason of a failure of heirs.—R. *v.* WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN & SMYLIE (1921), 21 Exch. C. R. 1; 59 D. L. R. 597.—CAN.

PART II. SECT. 3, SUB-SECT. 4.—A. (b) i.

k. For "k. ——.]—" substitute "101 k. —— ——.]—"

101 kk. —— ——.]—Where both the Dominion Parliament & a provincial legislature have legislated on the same subject & with the same object, & the

105. *Add. Annotations :*—**Apld.** A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328. **Refd.** Toronto Electric Comrs. v. Snider, [1925] A. C. 396.

106. *Add. Annotations :*—**Consd.** Toronto Electric Comrs. v. Snider, [1925] A. C. 396. **Refd.** A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328.

108. *Add. Citations :*—93 L. J. P. C. 101; 130 L. T. 101.

Add. Annotation :—**Distd.** Toronto Electric Comrs. v. Snider, [1925] A. C. 396.

108a. —— —— **Question of substance, not of form.**]—(1) The Parliament of Canada cannot, by purporting to create penal sections under head 27 of the above sect., appropriate to itself exclusively a field of jurisdiction in which, apart from that procedure, it could exert no legal authority; if, when examined as a whole, legislation in form criminal is found, in aspects & for purposes exclusively within the provincial sphere, to deal with matters committed to the provinces, it cannot be upheld as valid.

Reciprocal Insurance Act, 1922, of Ontario, authorised any person to exchange, through the medium of an attorney, with persons, whether in Ontario or elsewhere, reciprocal contracts of insurance, subject to provisions as to licences & other conditions; & it was provided that actions in respect of such contracts might be maintained in the cts. of the province. A Dominion Act of 1917 inserted in the Criminal Code (R. S. Can. 1906, c. 146), sect. 508c, by which it was made an indictable offence for any person to solicit or accept any insurance risk except on behalf of a co. or assocn. licensed under Insurance Act, 1917, of Canada. In answer to questions referred by the Lieutenant-Governor of Ontario to the Appellate Div. :—*Held :* (2) the Act of 1922 *was intra vires* the province, since (a) its provisions were capable of receiving a meaning according to which, whether enabling or prohibitive, they applied only to persons & acts within the territorial jurisdiction of the province, & (b) although it might incidentally affect aliens & dominion cos., it did not deal with them as such, but was an Act dealing with contracts of insurance; (3) the making & carrying out of contracts licensed pursuant to the Act were not rendered illegal, or otherwise affected, by Criminal Code, s. 508c; that sect. was invalid, since, in substance though not in form, it was in regulation of contracts of insurance, subjects not within the legislative competence of the Dominion; (4) the answers under (2) & (3) would be the same if any of the persons subscribing to a reciprocal insurance contract was (a) a British subject not resident in Canada immigrating into Canada, or (b) an alien. In so answering this question no opinion was expressed as to the competence of the Dominion Legislature to enact Insurance Act, 1917, ss. 11 & 12 (1), whereby restrictions were placed upon aliens & British cos. in the matter of carrying on insurance business in Canada; but sect. 12 (2) was held to be invalid in relation to the subject of immigration. — A.-G. FOR ONTARIO v. RECIPROCAL INSURERS, [1924] A. C. 328; 130 L. T. 738; 68 Sol. Jo. 383; *sub nom.* A.-G. FOR ONTARIO v. RECIPROCAL INSURERS, CRAIGON v. R., OTTE v. R., 93 L. J. P. C. 137; 40 T. L. R. 273, P. C.

Annotation : — *As to* (1) **Folld.** Toronto Electric Comrs. v. Snider, [1925] A. C. 396.

116. *Add. Annotation :* **Refd.** A.-G. for Quebec v. Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

117. *Add. Annotations :* **Refd.** A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328; Toronto Electric Comrs. v. Snider, [1925] A. C. 396.

119. *Add. Annotations :* — *As to* (1) **Refd.** Montreal Corpn. v. Montreal Harbour Comrs., Tetreault v. Montreal Harbour Comrs., A.-G. for Quebec v. A.-G. for Canada (1925), 42 T. L. R. 98; A.-G. for Quebec v. Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

121. *Add. Annotation :* **Refd.** A.-G. for Quebec v. Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

121a. —— —— —— **Safeguarding navigation of river obstructed by bridge included.**]—British North America Act, 1867 (c. 3), s. 91 (10), gives to the Parliament of the Dominion exclusive legislative authority over navigation & shipping, & sect. 92 (10) excludes from the jurisdiction of the provincial legislatures railways & other works extending beyond the limits of the province, & any works which, although wholly situate within the province, have been declared by the

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legislation is within the powers of the Dominion Parliament, the provincial legislation is inoperative.—R. v. SHENDAN, [1924] 3 D. L. R. 339; 3 W. W. R. 617; 34 B. C. R. 161.—CAN.

st. *Creation of new province—Restriction of legislative powers.*]—In exercising the authority to establish new provinces given to it by B. N. A. Act, 1871, the Dominion Parliament had power to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93.—R. (BROOKS) v. ULMER, [1923] 1 D. L. R. 304; 1 W. W. R. 1; 38 Can. Crim. Cas. 267; 19 Alta. L. R. 12.—CAN.

sv. *Legislation inconsistent with provincial rights—Powers conferred on Board of Commerce.*]—The Dominion Parliament cannot confer on the Board of Commerce jurisdiction that would restrict the liberty of the inhabitants of a province.—A.-G. FOR ONTARIO v. CANADIAN WHOLESALE GROCERS' ASSOCN., [1923] 2 D. L. R. 617; 39 Can. Crim. Cas. 272.—CAN.

PART II. SECT. 3, SUB-SECT. 4.—A. (b) ii.

114 iv. —— —— ——.]—Part IV. added to Canada Temperance Act, prohibiting the importation of intoxicating liquor into those provinces where its sale for beverage purposes is forbidden by provincial law, is *intra vires* the Dominion Parliament.—GOLD SEAL, LTD. v. DOMINION EXPRESS CO. & A.-G. FOR ALBERTA PROVINCE (1921), 62 D. L. R. 62; 62 S. C. R. 424; [1921] 3 W. W. R. 710; *affg* 58 D. L. R. 51; 34 Can. Crim. Cas. 259; 16 Alta. L. R. 113.—CAN.

c (p. 433). For "c" substitute "128b L."

sv. *Migratory Birds Protection Act, 1917 (c. 18)—How far intra vires.*]—R. v. STUART, [1925] 1 D. L. R. 12; [1924] 3 W. W. R. 646.—CAN.

sv. *Soldier Settlement Act*, ss. 33, 34 *—Intra vires.*]—R. v. POWLEY, [1923] Exch. C. R. 131.—CAN.

c (p. 434) l. —— .]—If an act prohibited by the Dominion Parliament is one that *may be considered* a criminal matter, its prohibition & the subject of evidence establishing such act are within the powers of Parliament, even though the act is one that relates to property & civil rights.—R. v. POWLEY (A.-G. CANADA), [1925] 1 D. L. R. 618, [1925] 1 W. W. R. 16; 43 Can. Crim. Cas. 242.—CAN.

a (p. 434) l. —— *Canada Grain Act, 1919, s. 35 (7)—Whether ancillary to or necessary for operation of Dominion law.*]—The above Act is not in the nature of an ancillary provision which, whilst encroaching upon matters assigned to the provincial legislatures, is required to prevent a scheme of a Dominion law being defeated; nor is it a case where, in order to operate a validly enacted law, procedure must be adopted to make effective that law even though it invades the legislative

Parliament of Canada to be for the general advantage of Canada. In the case of two railway bridges, one of them authorised by dominion statute, which fell within the exception :—*Held :* (1) the right & power of safeguarding the navigation of the river passing under & alleged to be obstructed by them was also in the hands of the Dominion ; (2) the rights & powers of the Dominion were not affected by the provisions of a treaty entered into between Great Britain & the United States in 1842, the Ashburton Treaty, which proceeded on the assumption that the Govt. of New Brunswick had power to make regulations as to the navigation of the river in question, there being no undertaking or guarantee, either to the United States or to New Brunswick, that such powers should remain unaltered for all time, & the change made being wholly consistent with the treaty. A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING (1925), 94 L. J. P. C. 142 ; 133 L. T. 436, P. C.

122. *Add. Annotation :* **Refd.** A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

122a. **Expropriation of provincial Crown lands.**] Railway Act, 1919 (c. 68), s. 189, which empowers any railway co., with the consent of the Governor-General, to take for the use of the railway provincial Crown lands as well as Dominion Crown lands, was within the legislative powers of the Parliament of Canada under British North America Act, 1867 (c. 3), ss. 91 (29), 92 (10). A.-G. FOR QUEBEC *v.* NIPISSING CENTRAL RY. CO. & A.-G. FOR CANADA, [1926] A. C. 715 ; 95 L. J. P. C. 221 ; 135 L. T. 520 ; 42 T. L. R. 591, P. C.

128a. **Question of substance, not of form.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

128b. **Power to impose customs duty Alcoholic liquor imported by province.**]—Customs & other duties imposed by the Dominion of Canada upon alcoholic liquors imported into Canada can be levied upon alcoholic liquors imported by the Govt. of British Columbia for the purpose of sale by it. The power of the Dominion under British North America Act, 1867 (c. 3), s. 91, heads 2 & 3, to impose duties upon the importation of goods into Canada is not limited by sect. 125, which exempts the "property" of a province from taxation. A.-G. OF BRITISH COLUMBIA *v.* A.-G. OF CANADA, [1924] A. C. 222 ; 130 L. T. 257 ; 40 T. L. R. 4 ; 68 Sol. Jo. 58, P. C.

130a. **"Peace, order & good government of Canada" Whether trade disputes included.**]—TORONTO ELECTRIC COMRS. *v.* SNIDER, No. 179a, *post*.

130b. **Taxation—Income tax.**]—(1) The Parliament of Canada had power under British North America Act, 1867 (c. 3), s. 91, head 3, to enact Income War Tax, 1917, & the amending Act of 1919, whereby every person residing, or ordinarily residing, or carrying on business in Canada is rendered liable to pay income tax.

(2) A minister of the Govt. of a province is liable under the Acts in respect of the salary & sessional indemnity payable to him under statutes of the province.—CARON *v.* R., [1924] A. C. 999 ; 94 L. J. P. C. 9 ; 132 L. T. 218 ; 40 T. L. R. 874, P. C.

130c. —— **Salary of provincial official—Whether liable.**]—CARON *v.* R., No. 130b, *ante*.

130d. **Navigation of river—Formerly considered as in provincial control—Ashburton Treaty.**]—A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING, No. 121a, *ante*.

134. *Add. Annotation :*—**Consd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328.

135. *Add. Annotation :*—**Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561.

135a. —— **Direct—What is.**]—A tax is not "direct taxation" within British North America Act, 1867 (c. 3), s. 92, head 2, unless in substance it is one which is demanded from the person who it is intended should pay it, even if the Act imposing it declares that it is to be a direct tax upon the person who pays.

In answer to questions referred by the Governor-General, namely : (1) whether the legislature of Manitoba had authority to enact c. 17 of its statutes for 1923, entitled "An Act to provide for the collection of a tax from persons selling grain for future delivery," & (2), if the Act was *ultra vires* in certain parts, then in what particulars it was *ultra vires* :—*Held :* the Act was wholly *ultra vires*, since in many transactions to which it related the person paying the tax would indemnify himself at the expense of others, & it was not possible to assume that the legislature intended to pass it in a truncated form.—A.-G. FOR MANITOBA *v.* A.-G. FOR CANADA, [1925] A. C. 561 ; 94 L. J. P. C. 146 ; 133 L. T. 193 ; 41 T. L. R. 400 ; 69 Sol. Jo. 445, P. C.

—— —— —— **Succession duty.**]—*See* Nos. 140 142, *post*.

136. *Add. Annotations :* **Refd.** Caron *v.* R., [1924] A. C. 999 ; A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561.

138. *Add. Annotation :*—**Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561.

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fields of the provinces in respect of property or civil rights.—R. *v.* KAUFMAN TERMINAL ELEVATOR CO., [1923] S. C. R. 434.—CAN.

s (p. 434) ii. —— *War legislation—Establishment of Canada Wheat Board.*] *Held :* the legislation & Orders in Council establishing the Board were *intra vires* the Dominion Parliament as being either (a) legislation arising out of war, or (b) regulation of trade & commerce.—A.-G. FOR CANADA *v.* ALEXANDER BROWN MILLING & ELEVATOR CO., [1923] 4 D. L. R. 443 ; 53 O. L. R. 393.—CAN.

ee i. *Power to name courts to try offences against Inland Revenue Act, R. S. C. 1886 (c. 34).*] R. *v.* KENNEDY (1902), 35 N. S. R. 266.—CAN.

PART II. SECT. 3, SUB-SECT. 4.—A. (b) iii.

a (p. 435). For "a. *Taxation—Direct—Power to impose.*]—" substitute "135a i. *Taxation—Direct—What is.*]—"

b (p. 435). For "b" substitute "135a ii."

e (p. 435). For "e" substitute "135a iii."

135a iv. —— —— ——.]—City Act (Sask.), s. 415a, which empowers the city council to enact a bye-law requiring every person attending a place of amusement to pay a tax upon each admission to such place, is *intra vires*, as it is a direct tax & comes within the taxation powers of B. N. A. Act, s. 92 (2).—CLARKE *v.* MOOSE JAW (CITY), [1923] 2 D. L. R. 216 ; 16 Sask. L. R. 332 ; [1923] 1 W. W. R. 1126.—CAN.

140. *Add. Annotation :*—**Mentd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101.

141. *Add. Annotation :*—**Consd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561.

142. *Add. Annotations :*—**Consd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561. **Reld.** Brassard *v.* Smith, [1925] A. C. 371.

145. *Add. Annotations :*—**Reld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Caron *v.* R., [1924] A. C. 999; Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396.

145a. —— **Construction of legislation—Limitation to provincial jurisdiction.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

150. *Add. Annotations :*—**Reld.** Nadan *v.* R., [1926] A. C. 482. **Mentd.** R. *v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192.

159. *Add. Annotation :*—**Reld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328.

161. *Add. Citations :*—[1924] A. C. 203; 93 L. J. P. C. 33; 130 L. T. 227.

162a. —— **Legislation incidentally affecting.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

164. *Add. Annotation :*—**Distd.** Lord's Day Alliance of Canada *v.* A.-G. for Manitoba, [1925] A. C. 384.

164a. ——.]—Lord's Day Act (R. S. Can., 1906, c. 153) made it a punishable offence to run or conduct Sunday excursions "except as provided by any provincial Act or law now or hereafter in force." An Act passed by the legislature of Manitoba in 1923 to amend Lord's Day Act of that province, enacted that it should be lawful to run or conduct Sunday excursions to resorts within the province. Sunday excursions were not unlawful by the laws of England existing in 1870, which were part of the law of Manitoba by 51 Vict. c. 33 (Dom.):—*Held:* the Manitoba statute of 1923 being merely permissive, & not dealing with a matter brought within the criminal law, was competent to the provincial legislature under British North America Act, 1867 (c. 3), s. 92, heads 13, 16; &, that being so, the Act was a provincial Act "now or hereafter in force" within Lord's Day Act of Canada; it was unnecessary to consider whether the Act of 1923 could be justified as Dominion legislation by delegation or reference.—LORD'S DAY ALLIANCE OF CANADA *v.* A.-G. FOR MANITOBA, [1925] A. C. 384; 94 L. J. P. C. 84; 132 L. T. 678; 41 T. L. R. 225, P. C.

168. *Add. Annotations :*—**Reld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Caron *v.* R., [1924] A. C. 999.

170a. —— **Legislation incidentally affecting.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

177a. **Building & public health—Application to denominational schools.**]—British North America Act, 1867 (c. 3), s. 93, does not prevent the provisions of Municipal Act of Ontario with reference to building, & other matters relating to the health & convenience of the population, from applying to denominational schools. TORONTO CORPN. *v.* ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658, P. C.

178. *Add. Annotation :* **Reld.** Nadan *v.* R., [1926] A. C. 482.

179a. **Trade disputes.**]—Industrial Disputes Investigation Act, 1907, of Canada, provided that upon a dispute occurring between employers & employees in any of a large number of important industries in Canada the Minister for Labour for the Dominion might appoint a board of investigation & conciliation. The board was to make investigations, with power to summon witnesses & inspect documents & premises, & was to try to bring about a settlement; if no settlement resulted, they were to make a report with recommendations as to fair terms, but the report was not to be binding upon the parties. After a reference to a board, a lock-out or strike was to be unlawful & subject to penalties:—*Held:* the Act was

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141 iii. —— —— —— ——.]—The tax under Succession Duty Act (B. C.), as applied to "movables" outside the province belonging to a person who died domiciled within the province, is a direct tax & *intra vires*.—*Re* INVERARITY ESTATE, [1924] 1 D. L. R. 1020; 1 W. W. R. 901; 33 B. C. R. 318.—**CAN.**

146 xii. —— —— ——.)—Govt. Liquor Act, 1921 (c. 30), which vests in a Board of Control the exclusive sale of intoxicating liquor within the province, is *intra vires*.—R. *v.* FERGUSON (B.C.), [1923] 2 W. W. R. 473; 69 D. L. R. 153; 37 Can. Crim. Cas. 89.—**CAN.**

146 xiii. —— —— ——.)—The imposition by Govt. Liquor Act, 1921 (c. 30), s. 55, of a tax upon any liquor not purchased from a vendor at a govt. liquor store, is *intra vires* the provincial legislature.—LITTLE *v.* A.-G. FOR BRITISH COLUMBIA (B.C.), [1922] 2 W. W. R. 359; 65 D. L. R. 297; 37 Can. Crim. Cas. 189; *affg.*, 60 D. L. R. 335; 30 B. C. R. 343.—**CAN.**

146 xiv. —— ——.)—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 11 (2), requiring every brewer, distiller, & liquor exporter to make certain returns to the Commission is *intra vires* the provincial legislature, even in respect to a liquor export co. incorporated by the Dominion Parliament. R. *v.* REGINA WINE & SPIRIT, LTD., R. *v.* PRAIRIE DRUG CO., LTD., [1922] 1 W. W. R. 195; 65 D. L. R. 258, 36 Can. Crim. Cas. 318; 15 Sask. L. R. 100. **CAN.**

c (p. 438). For "*Prohibition Act—Confiscatory provisions*" read "*Confiscatory provisions Prohibition Act.*"

e (p. 438) l. —— *Act of 1868 (c. 3), s. 55.*]—*Held:* the right to impose forfeiture under the above sect. of an offender's goods as punishment was within the powers of the provincial legislature.—R. *v.* GARDNER (1892), 22 N. S. R. (13 R. & G.) 47. **CAN.**

f (p. 438) l. —— *Restrictions on export.*]—The requirements in Saskatchewan Temperance Act, that all warehouses in which liquor is kept for export be located in cities having a population of 10,000, is *intra vires*. CANADA DRUGS, LTD. *v.* A.-G. FOR SASKATCHEWAN (SASK.), [1922] 2 W. W. R. 1089; 67 D. L. R. 3; 38 Can. Crim. Cas. 69; 15 Sask. L. R. 506; *varying*, 66 D. L. R. 615; 37 Can. Crim. Cas. 367.—**CAN.**

k (p. 438) l. —— *Creation of Criminal offences.*]—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 68 (2), as amended, is *ultra vires* the provincial legislature, in so far as it professes to set up a new act as a criminal offence, namely, the obstruction of the "officer" mentioned in sect. 2 (7a) in the execution of his duties under the Act. R. (WILSON) *v.* MAPLE LEAF CLUB, [1924] 3 W. W. R. 55.—**CAN.**

151 i. *Barristers — Provision authorising remuneration by share of proceeds of action.*]—It is *ultra vires* a provincial legislature to alter the law relating to champerty, authorising barristers & solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs. TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 526; 3 W. W. R. 97; 34 B. C. R. 56.—**CAN.**

161 vi. —— *Restrictions on sale of shares.*]—Sale of Shares Act, R. S. S. (1920), s. 4, in so far as it purports to apply to the sale of its own shares by a Dominion co., is *ultra vires* the provincial legislature.—LUKEY & A.-G. FOR SASKATCHEWAN *v.* RUTHENIAN FARMERS ELEVATOR CO., LTD., [1924] 1 D. L. R. 706; [1924] S. C. R. 56; 1 W. W. R. 577.—**CAN.**

165 vii. —— ——.)—Sale of Securities Act, 1923 (N. B.), s. 4, so far as it purports to apply to sales of shares of Dominion cos., is *ultra vires* the provincial legislature.—R. *v.* HENDERSON, *Ex p.* QUEEN (1924), 51 N. B. R. 346.—**CAN.**

not within the competence of the Parliament of Canada under British North America Act, 1867 (c. 3); it clearly was in relation to property & civil rights in the provinces, a subject reserved to the provincial legislatures by sect. 92 (13), & was not within any of the overriding powers of the Dominion Legislature specifically set out in sect. 91; the Act could not be justified under the general power in sect. 91 to make laws "for the peace, order, & good government of Canada," as it was not established that there existed in the matter any emergency which put the national life of Canada in anticipated peril.—TORONTO ELECTRIC COMRS. *v.* SNIDER, [1925] A. C. 396; 94 L. J. P. C. 116; 132 L. T. 738; 41 T. L. R. 238; 69 Sol. Jo. 325, P. C.

181a. Appointment of judges.]—Judicature Act, 1924, of Ontario, s. 2 (2—6), & s. 4 (1) & (2). are *ultra vires* the legislature of the province, since their effect is to authorise the Lieutenant-Governor of the province to assign, that is to say to appoint, certain judges of the High Ct. Div. of the Supreme Ct. to be judges of the Appellate Div. of that ct., & also to designate, that is to say to appoint, certain judges to hold the offices of Chief Justice of Ontario & Chief Justice of the High Ct. Div., & consequently the provisions are inconsistent with British North America Act, 1867 (c. 3), s. 96, under which the powers of appointment referred to are given to the Governor-General of Canada. Sect. 4 (3), however, which provided that upon a vacancy occurring among the judges of the Appellate Div. or of the High Ct. Div. before the provisions of the Act came fully into force, the Divs. were to consist of the remaining judges, was not open to objection.—A.-G. FOR ONTARIO *v.* A.-G. FOR CANADA, [1925] A. C. 750; 94 L. J. P. C. 132; 133 L. T. 434, P. C.

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f (p. 442) i. —— ——.]—*Held:* the Dominion Parliament had power under B. N. A. Act, 1871, to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93, & School Attendance Act does not violate any of the protective provisions preserved by Alberta Act, s. 17.—R. (BROOKS) *v.* PALMER, [1923] 1 D. L. R. 304; 38 Can. Crim. Cas. 207; 19 Alta. L. R. 12; [1923] 1 W. W. R. 1.—CAN.

a (p. 442) i. —— *Remuneration of judges.*]—Having regard to B. N. A. Act, 1867, ss. 92 (14), 96–101, the matters dealt with in Judges Act, R. S. C. 1906, s. 34 are within the exclusive authority of the provincial legislatures in so far as the judges of the provincial cts. are concerned.—*Re* JUDGES ACT, [1923] 2 D. L. R. 604; 53 O. L. R. 105.—CAN.

a (p. 442) ii. —— *Appointment of commissioner with judicial powers.*]—McLEAN GOLD MINES, LTD. *v.* A.-G., [1923] 1 D. L. R. 10; 54 O. L. R. 573.—CAN.

aa (p. 443) i. —— *Penalties for fraudulent conveyances.*]—Stat. 13 Eliz. c. 5, s. 3, is not in force in Alberta. 13 & 14 Geo. v, c. 5 (Alta.), s. 46, declaring this stat. to have been in force, could not have the effect of introducing s. 3. The Federal Parliament having made the commission of fraudulent acts a crime, the subject-matter is criminal law & beyond the competence of the provincial legislature.—CONNORS *v.* KELL, [1924] 2 D. L. R. 59; 1 W. W. R. 1050; 20 Alta. L. R. 203.—CAN.

a (p. 445) i. —— *Powers of medical council.*]—Medical Profession Act, R. S. S., 1920 (c. 135), s. 40, is not *ultra vires* on the ground that it infringes on the powers of the Governor-General under B. N. A. Act, 1867, s. 96.—HUNT *v.* COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—CAN.

d (p. 446) i. ——.]—A provincial enactment altering the law relating to champerty, by authorising solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs, is an invasion of the legislative domain of the Dominion Parliament relative to criminal law.—TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 34 B. C. R. 56.—CAN.

sa. *Property & civil rights—Closing disorderly house.*]—10 Geo. V., c. 81 (Q.), authorising a judge to order the closing of a disorderly house, is *intra vires* the provincial legislature, as it deals with matter of property & civil rights by providing for the suppression of a nuisance & not with criminal law by aiming at the punishment of a crime.—BEDARD *v.* DAWSON & A.-G. FOR QUEBEC, [1923] 4 D. L. R. 293; [1923] S. C. R. 681; 3 W. W. R. 412.—CAN.

sb. —— *Canada Grain Act, 1919, s. 95 (7).*]—The above Act deals with a subject-matter falling within the powers exclusively assigned to the provincial legislatures by B. N. A. Act, namely property & civil rights, & is *ultra vires* the Dominion Parliament.—R. *v.* EASTERN TERMINAL ELEVATOR CO., [1924] Exch. C. R. 167; [1925] S. C. R. 434.—CAN.

sc. *Labour in industrial undertakings.*]—The matter of labour in industrial undertakings in Canada is primarily within the competence of provincial legislatures, but Parliament can legislate as to labour in territories not yet organised into, or forming part of, a province, & as to labour of servants of the Dominion, if these are within the scope of the draft convention adopted by the International Labour Conference of the League of Nations in 1919.—*Re* LEGISLATIVE JURISDICTION OVER HOURS OF LABOUR REFERENCE BY GOVERNOR-GENERAL IN COUNCIL, [1925] 3 D. L. R. 1114; [1925] S. C. R. 505.—CAN.

sd. *Marriage.*]—Marriage Act, R.S.O., 1914 (c. 148), ss. 15 & 36, as amended by Marriage Law Amendment Act, 1919 (c. 33), ss. 2 & 4, are within the powers of the provincial legislature.—STEWART *v.* STEWART, [1925] 1 D. L. R. 1; 56 O. L. R. 57.—CAN.

se. ——.]—Marriage Act, R. S. O., 1914 (c. 148), & its amendments, are *intra vires* the provincial legislature, in so far as they provide for dissolution or nullity of a marriage.—DOYLE *v.* DEADY, [1925] 3 D. L. R. 317; 57 O. L. R. 44.—CAN.

PART II. SECT. 3, SUB-SECT. 4.—A. (c).

d i. —— *Betting Information Act, 1923 (c. 5)—Ultra vires.*]—R. *v.* LICHTMAN (1923), 42 Can. Crim. Cas. 1; 54 O. L. R. 502.—CAN.

PART II. SECT. 3, SUB-SECT. 4.—B. (a).

e (p. 447) i. ——.]—Customs Tariff (Industries Preservation) Act, 1921–1922, deals only with the imposition of taxation, & does not infringe the first paragraph of sect. 55 of the Constitution. Customs Tariff (Industries Preservation) Act, 1921–1922, s. 5, deals with duties of customs only, & does not infringe the second paragraph of sect. 55 of the Constitution. The tax imposed by sect. 5 is imposed by the Commonwealth Parliament, & is not an infringement of sect. 90 of the Constitution.—NOTT BROTHERS & CO., LTD. *v.* BARKLEY (1925), 36 C. L. R. 20; 31 Argus L. R. 256.—AUS.

h (p. 447) i. ——.]—Judiciary Act, 1903–1920, s. 39 (2) (a) [as interpreted in No. 605 i, *post*], is a valid exercise of the power conferred by sect. 77 (iii.) of the Constitution.—LIMERICK S.S. CO. *v.* COMMONWEALTH OF AUSTRALIA (1924), 25 S. R. N. S. W. 293; 35 C. L. R. 69; 31 Argus L. R. 153.—AUS.

sf. *Trading by Commonwealth—Through agents—War Precautions (Wool) Regulations.*]—During the war & after the making of the above regulations, the Executive Govt. of the Commonwealth entered into agreements with a co., engaged in the manufacture & sale of wool tops. Each of these agreements was either an agreement to give consent to a sale of wool tops by the co. in return for a share of the profits, called by the parties a "licence fee," or an agreement that the business of manufacturing wool tops should be carried on by the co. as agent in consideration of an annual sum from the Commonwealth, or a combination of both these agreements:—*Held:* apart from any authority conferred by an Act of Parliament of the Commonwealth or by regulations thereunder, the Executive Govt. had no power to make or ratify any of the agreements.—COMMONWEALTH & CENTRAL WOOL COMMITTEE *v.* COLONIAL, COMBING, SPINNING & WEAVING CO., LTD. (1923), 31 C. L. R. 421.—AUS.

sg. *Power to confer judicial powers.*]—The powers which Income Tax Assessment Act, 1922–1923, by ss. 44, 50 & 51, purports to confer upon a Board of Appeal created under the Act are part of the judicial power of the Commonwealth, which under sect. 71 of the Constitution can only be vested in the High Ct. or a federal ct., & a Board of Appeal not being such a ct., the conferring of those powers is *ultra vires* the Commonwealth Parliament.—BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL COMR. OF TAXATION (1925), 35 C. L. R. 422; 31 Argus L. R. 129.—AUS.

sh. *Power to give appellate jurisdiction to High Court—Appeal from non-federal court.*]—The Commonwealth Parliament may confer upon the High Ct. jurisdiction to entertain an appeal from a ct. established by the Parliament in a territory, notwithstanding

184a. —— Power to compel British company to deduct income tax from dividends on shares situate in England.]—Pltfs., a British co., held shares in deft. co., which was a British co., but which had its head office & board of directors in Australia, though it had a London committee for registering transfers of shares & issuing certificates. Deft. co. having declared a dividend, the Australian income tax authorities, acting under Australian Income Tax Acts, required deft. co. to deduct the Australian income tax from the dividend due to pltf. co. In an action claiming the amount so deducted:—*Held:* the debt created by the declaration of a dividend was situate in England, & the Commonwealth legislature had no power to impose taxation on pltf. co. in respect of such debt, & the action succeeded.—LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., [1927] 1 Ch. 107; [illegible] J. Ch. 58; 70 Sol. Jo. 1024; *sub nom.* *v.* BRITISH TOBACCO CO. (AUSTRALIA), [illegible]. (1926), 42 T. L. R. 771.

200a. Appointment — What constitutes.] — A.-G. FOR ONTARIO *v.* A.-G. FOR CANADA, No. 181a, *ante*.

200b. —— Rights of existing judge—On constitution of new court.]—Judicature Act, 1919, of Alberta, s. 6, requires for its working the appointment of two Chief Justices, one of the Appellate Div., & the other of the Trial Div., that the ct. so established is not a federal ct. within sect. 71 of the Constitution; & jurisdiction to entertain an appeal from the Supreme Ct. of the Northern Territory is lawfully conferred upon the High Ct. by Supreme Ct. Ordinance, 1911–1922, s. 21, & Northern Territory (Administration) Act, 1910, s. 13.—PORTER *v.* R., *Ex p.* CHIN MAN YEE (1926), 37 C. L. R. 433.

[illegible] *Discovery—Against State.*]—Judiciary Act, 1903–1920, s. 64, in so far as it gives pltf., resident of one State, in an action against another State, the [illegible] obtain discovery of [illegible]: to administer into [illegible] is within the power of the Commonwealth Parliament.—GRIFFIN *v.* SOUTH AUSTRALIA [illegible] 924), 35 C. L. R. 200; 31 [illegible] L. R. 81.—AUS.

PART II. SECT. 3, SUB-SECT. 4.—D.

h i. —— —— *Distribution of* [illegible] -The tax imposed [illegible] cos. by Transvaal Provincial [illegible] of 1923, s. 3, of [illegible] for each pound of di[illegible] a certain date, is tax *intra vires* the Pro[illegible] Council under South Africa Act, s. 85 (1).—JOHANNESBURG CONSOLIDATED INVESTMENT CO., LTD. *v.* [illegible] TION, [1925] App. D. 477.—S. AF.

h ii. —— —— *Receipt of premiums.*]—The tax imposed by Tax [illegible] of 1923 (Transvaal) upon [illegible] cos., on premiums received, is a tax *intra vires* the Provincial Council under South Africa Act, s. 85 (1).—[illegible] r.

[illegible]. AF.

of the Supreme Ct., & the fact that before the passing of the Act the Chief Justice was Chief Justice of the Supreme Ct. did not necessarily entitle him to be, or to be appointed, Chief Justice of the Appellate Div., & his non-appointment to that office did not constitute an infringement of any legal right to which he was entitled.—SCOTT *v.* A.-G. FOR CANADA (1923), 40 T. L. R. 6, P. C.

201. *Add. Annotation:*—**Mentd.** *Re* Letters Patent No. 130,207; *Re* Carbonit Akt., [1924] 2 Ch. 53.

234a. Court of civil judge of Secunderabad—Limitation of action.]—Applt. sued resps. in the ct. of the civil judge at Secunderabad to recover money lent to a deceased relative. Both the borrower & the alleged surety & their representatives were residents in Hyderabad, in which the civil judge's ct. had no jurisdiction. If the suit had been brought in the Nizam's ct. at Hyderabad, it would have been barred by Stat. Limitations, but, in the Secunderabad ct. foreign residence could be claimed by way of exemption from limitation. Judgment of the Resident at Hyderabad dismissing the suit affirmed, no part of the cause of action having arisen within the local limits of the ct. of the civil judge at Secunderabad.—RAI BAHADUR BANSILAL ABIRCHAND *v.* GHULAM MAHBUB KHAN (1925), 42 T. L. R. 5, P. C.

[illegible] k i. [illegible] o [illegible] areas.] [illegible] II [illegible] 7 of [illegible] 3, which [illegible] on the [illegible] to

[illegible] to [illegible] d with the sole object of carrying out Public Health Act 36 of 1919, & not of creating any form of [illegible] ol under South Africa Act, s. 85 (6).—ISIPINGO HEALTH COMMITTEE *v.* JADWAT, [1926] App. D. 113.—S. AF.

[illegible] on [illegible] Under the [illegible] slature of [illegible] by the Order in Council of 1858 5, it is *intra vires* for that [illegible] to levy a tax upon [illegible] to a non-resident from [illegible] not within [illegible] within the territory.—RHODESIA RYS. *v.* COMR. OF TAXES, [1925] App. D. 438.—S. AF.

PART II. SECT. 3, SUB-SECT. 4.—E.

XV. of 1895, which enacts that [illegible] by the Crown of estates [illegible] to the law are not invalid, is not [illegible] INDIA *v.* [illegible] RAO [illegible] I. L. R. 49 Mad. 349.—IND.

PART II. SECT. 4, SUB-SECT. 1.

[illegible] —To [illegible] appoint [illegible] comr. [illegible] Act [illegible] (Ont.), s. 123, & then invest him [illegible] of [illegible] powers exercisable by a [illegible] pe[illegible] as that term is to be [illegible] within [illegible] B. N. A. Act, is to enable the [illegible] in [illegible] of a superior ct., which is beyond its power; & it could not be pre[illegible] that the Governor-General had the provincial appointee a patent [illegible] him a judge of a [illegible] A.-G., [1923] 1 D. L. R. 10; 54 O. L. R. [illegible] am.—*Held:* Judges Act, R. S. C. s. 34, has no application to the re[illegible] of a judge whose appoint[illegible] duty or service[illegible] it of that [illegible] D. L. R. 604; 52 O. L. R. 105.—CAN.

PART II. SECT. 4, SUB-SECT. 2.—A. [illegible] an. *Canada—Ultra* [illegible] for [illegible] a [illegible] the [illegible] [1921] 3 W. W. R. 3; 62 D. L. R. 403; 17 Alta. L. R. 150.—CAN.

[illegible] *to counties in Ireland.*]—Under Grand Jury Act, 1836, s. 140, [illegible] " in [illegible] for [illegible] of [illegible] within [illegible] in [illegible] 2 I. R. 54.—PLUNKETT &

Part III.—Laws of the Colonies.

238a. Rule of English law as to parliamentary control of revenue—Application in New Zealand.]—It is a principle of the British constitution, inherited in the constitution of New Zealand, that no money can be taken out of the Consolidated Fund into which the revenues of the State have been paid, except under a distinct authorisation by Parliament itself; a payment made without that authority is illegal & *ultria vres*, & the money, if it can be traced, can be recovered by the Govt.

An agreement made in 1913 provided (*inter alia*) that the Minister of Railways of New Zealand, representing the Crown, should pay to applts. £7,500 when applts. granted a lease to B. & Co. The making of the agreement had been authorised by an Act of 1912, which empowered the Minister, without further appropriation, to pay to applts. out of the Public Works Fund such sum as might be payable in accordance with the agreement. Owing to an alteration in the scheme to which the agreement related, the Minister did not require applts. to grant the lease, & it was not granted. Nevertheless the £7,500 was paid by the Minister of Railways to applts. in 1914 out of a vote included in the Public Works Schedule to the Appropriation Act for the year, & the Controller & Auditor-General passed the sum as being so payable: - *Held:* as the lease had not been granted the payment of the £7,500 was not authorised by the Act of 1912, & it was recoverable by the Govt. & could be deducted from a larger sum admittedly due to applts.—AUCKLAND HARBOUR BOARD v. R., [1924] A. C. 318; 93 L. J. P. C. 126; 130 L. T. 621, P. C.

Annotation:—**Reld.** A.-G. v. G.S. & W. Ry. of Ireland, [1925] A. C. 754.

242. *Add. Annotation:*—**Reld.** A.-G. for Alberta v. Cook, [1926] A. C. 444.

265a. Recognition of existing proprietary rights—Effect of proclamation.]—After a sovereign State has acquired territory, either by consent, or by cession under treaty, or by the occupation of territory theretofore unoccupied by a recognised ruler, or otherwise, an inhabitant of the territory can enforce in the municipal cts. only such proprietary rights as the Sovereign has conferred or recognised. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights that gives them no right which they can so enforce. The meaning of a general statement in a proclamation that existing rights will be recognised is that the Govt. will recognise such rights as upon investigation it finds existed. The Govt. does not thereby renounce its right to recognise only such titles as it considers should be recognised, nor confer upon the municipal cts. any power to adjudicate in the matter.

Applts. brought a suit for a declaration that they were proprietors of certain lands situated within territory which in 1860 had been ceded to the British Govt. under a treaty:—*Held:* upon the facts, & applying the above principles, the suit failed.—VAJESINGJI JORAVARSINGJI v. SECRETARY OF STATE FOR INDIA (1924), L. R. 51 Ind. App. 357, P. C.

271a. [illegible].]—WIJEYEWARDENE v. JAYAWARDENE (1924), 94 L. J. P. C. 44; 132 L. T. 161; 69 Sol. Jo. 793.

290. *Add. Annotation:*—**Reld.** Nadan v. R., [1926] A. C. 482.

Part VI.—Conflict of Laws—Colonial Judgments.

366. *Add. Annotation:*—**Mentd.** Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

Part VIII.—Property in Land.

369. *Add. Annotation:*—**Mentd.** Ontario & Minnesota Power Co. v. R., [1925] A. C. 196.

371. *Add. Annotation:*—**Mentd.** Ontario & Minnesota Power Co. v. R., [1925] A. C. 196.

PART III. SECT. 2. SUB-SECT. 1.—A.

h 1. *Mode of exclusion—Subject-matter covered by colonial legislation.*]—The provisions, relating to fraudulent & preferential assignments, of Assignments Act, 1907, repealed in 1921, reenacted in 1922, & consolidated in Fraudulent Preferences Act, R. S. A. 1922, constituted a complete code upon the subject which had the effect of excluding Stat. 13 Eliz. c. 5, s. 3, as to a penal action.—CONNORS v. ELLI, [1924] 2 D. L. R. 59; 1 W. W. R. 1050; 20 Alta. L. R. 205.—**CAN.**

PART III. SECT. 2. SUB-SECT. 1.—B.

mm (p. 464) 1. —— *Applicable to Alberta.*]—LAMB v. LAMB, [1925] 4 D. L. R. 596; [1925] 3 W. W. R. 397.—**CAN.**

b (p. 465) 1. —— *Applicable to India.*]—The above Act extends to India, & applies to Hindoos & Mahomedans as well as Europeans, in civil actions in the Supreme Ct.—RUCKMABOYE v. LULLOOBHOY MOTTICHUND (1852), 5 Moo. Ind. App. 234.—**IND.**

PART VIII. SECT. 1.

e 1. —— *Rights of Dominion & private person—Grant of land by province before confederation.*]—Where plff. claimed under a grant issued by the province, in 1857, prior to confederation:—*Held:* the Crown, as represented by the Dominion under B.N.A. Act, 1867, s. 91 (12), could not grant by licence power to erect a weir on private property.—DELAP v. HAYDEN [1924] 3 D. L. R. 11; 57 N. S. R. 346—**CAN.**

so. *India—Land held by East India Company.*]—A village not permanently assessed was granted by the East India Co. in 1843 to the predecessor of plff. with a condition restraining its alienation without the Govt.'s previous sanction:—*Held:* though the formal assumption of sovereignty in India by the Crown was only in 1858, yet the possessions were, as provided by the previous Charter Acts, held by the East India Co. only as the delegates of & in trust for the Crown.—SECRETARY OF STATE FOR INDIA v. RAJA PARTHASARATHY APPA RAO (1926), I. L. R. 49 Mad. 349.—**IND.**

378a. —— Foreshore & bed of navigable river—St. Lawrence.]—The King, as representing the Province of Quebec, is the sole owner of the foreshore & bed of the St. Lawrence River at the place where the Montreal harbour comrs. constructed works which necessitated the outlet of a sewer in the city of Montreal being changed. The Dominion statutes did not authorise the harbour comrs. to take possession of the lands of the Province of Quebec without compensation.—MONTREAL CORPN. v. MONTREAL HARBOUR COMRS., TETREAULT v. MONTREAL HARBOUR COMRS., A.-G. FOR QUEBEC v. A.-G. FOR CANADA [1920]. A. C. 299; 95 L. J. P. C. 60; 134 L. T. 578; 42 T. L. R. 98, P. C.

391. *Add. Annotation:*—**Refd.** Sobhuza II. v. Miller, [1926] A. C. 518.

Part IX.—Judicial Committee of the Privy Council.

394. *Add. Annotation:*—**Refd.** Nadan v. R., [1926] A. C. 482.

398a. Supreme Court of Palestine—Sitting as court of first instance.]—JERUSALEM-JAFFA DISTRICT GOVERNOR v. SULEIMAN MURRA, No. 20a, *ante*.

401. *Add. Annotation:*—**Refd.** Nadan v. R., [1926] A. C. 482.

405. *Add. Annotation:*—**Mentd.** St. Magnus the Martyr, London Bridge (1924), 41 T. L. R. 3.

445. *Add. Annotation:*—**Refd.** Nadan v. R., [1926] A. C. 482.

465. *Add. Annotation:*—**Apld.** A.-G. for Alberta v. Cook, [1926] A. C. 444.

485a. —— Directly or indirectly involved—Successful appeal rendering possible prosecution of claim for larger sum.]—Upon a dispute as to a contract for the sale of goods, arbitrators awarded Rs. 18,000 to petitioner & Rs. 3,000 to resps. The award in favour of petitioner having been set aside, he brought a suit to set aside the award in favour of resps. The appellate ct. in India made a decree dismissing the suit & refused to certify under Code of Civil Procedure, 1908, s. 110, that the case was a fit one for appeal to the Privy Council in that it would "involve, directly or indirectly, some claim or question to or respecting property" of Rs. 10,000, or upwards. Petitioner contended that he had a right of appeal under the above words of sect. 110, since if the appeal succeeded he could proceed with a suit, which had been stayed, claiming Rs. 81,000 damages under the contract:—*Held:* without defining the meaning of "property" as used in sect. 110 petitioner's claim upon the contract was too remote to be considered as being property indirectly involved, & his petition should be dismissed. DHOYCHAND PANNALAL v. GUZDAR (P. E.) & Co. (1925), L. R. 52 Ind. App. 207, P. C.

490. *Add. Annotation:* **Mentd.** Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

501. *Add. Annotation:* **Refd.** Nadan v. R., [1926] A. C. 482.

525. *Add. Annotation:* **Refd.** Nadan v. R., [1926] A. C. 482.

526a. From Canadian court.] NADAN v. R., No. 91a, *ante*.

527. *Add. Annotation:* **Refd.** Nadan v. R., [1926] A. C. 482.

534. *Add. Annotation:* **Refd.** Nadan v. R., [1926] A. C. 482.

PART VIII. SECT. 2.

r i. —— *Canal Reserve, Ottawa.*]—*Held:* legislation with respect to Ordnance lands vested in the Province of Canada the lands comprised in 19 Viet. c. 45, sched. 2, & any trust with which the lands were impressed was put an end to as to the lands under that schedule by such legislation, & 7 Viet. c. 11 gave power to sell any vacant land not required for military or canal purposes or for the Ordnance Dept.—OTTAWA (CITY) v. GRAND TRUNK RY. CO., OTTAWA (CITY) v. OTTAWA & NEW YORK RY. CO. (1920), 64 D. L. R. 337; 50 O. L. R. 239.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 2.—A.

448 i. *General rule.*]—Special leave to appeal should only be granted where the case involves matters of public interest or some important question of law.—RICHES v. CITY OF MOOSE JAW, [1925] 4 D. L. R. 326; [1925] 3 W. W. R. 399.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 2.—B. (a).

483 iv. —— *Partnership suit.*]—Where leave to appeal to the Privy Council was applied for, petitioner contending that the decree involved a claim respecting property of Rs. 10,000 within the meaning of Civil Procedure Code, 1908, s. 110 (2):—*Held:* it was the value of applt.'s share in the partnership that must be looked to, & not the value of the whole of the partnership property.—NARIMAN RUSTOMJI MEHTA v. HASHAM ISMAYAL VALAD HAJI KHAMISA (1924), I. L. R. 49 Bom. 119.—**IND.**

483 v. —— *"Property" Loss of trade & goodwill.*]—Where the result of a judgment was to destroy or prevent defts. from trading by depriving them of goodwill & of trade names which they had hitherto used:—*Held:* these were "property"; & as any of the matters in controversy was worth more than $4,000, the matter was a "pecuniary amount" exceeding that sum within Privy Council Appeals Act, s. 2.—BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO. (1924) 2 D. L. R. 1238; 54 O. L. R. 629.—**CAN.**

h ii. ——.]—On an application for leave to appeal to the Privy Council mesne profits subsequent to the date of the High Ct. decree cannot be taken into account in making an estimate of value under Civil Procedure Code, 1908, s. 110 (2).—SUBRAMANIA SHANMUGALINGAM v. MANIAYYA (1925), I. L. R. 50 Bom. 160.—**IND.**

sp. *Not amount of penalty imposed by fine or forfeiture under penal statute.*]—R. v. REGINA WINE & SPIRIT, Ltd. (No. 2), [1922] 2 W. W. R. 1166; 67 D. L. R. 436.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 3.—A.

532 i. *Not a court of criminal appeal.*]—The Judicial Committee will neither accept nor share the responsibility for the administration of criminal justice in India, unless there has been some violation of the principles of justice or some disregard of legal principles.—BERRIM v. R., RANDIR SINGH v. R., TARA SINGH v. R., BHUDA BAKSH v. R. (1923), I. L. R. 48 Bom. 516.—**IND.**

532 ii. ——.]—The power of the Judicial Committee to entertain appeals from a lower ct. is not that of a ct. of criminal appeal, but as the Privy Council advising the Sovereign with regard to the exercise of the prerogative, which is a remnant of the powers of the Crown to interfere with tribunals of justice, which do not exist in this country at all. There must be proof that there was no proper trial & that the forms of all judicial procedure were disregarded, not only according to local ordinances, but according to the unvarying character which is common to all.—HEMANTRAO v. R. (1924), I. L. R. 48 Bom. 494.—**IND.**

PART IX. SECT. 4, SUB-SECT. 3.—B. (a).

538 ii. ——.]—R. v. SCOTT (No. 2) (1924), 57 N. S. R. 261.—**CAN.**

538 iii. —— *Evidence improperly admitted.*]—*Held:* the use made in evidence of books & documents found in the library of a suspected person presented a question of "great general & public importance."—R. v. MCLAUGHLAN, [1924] 1 D. L. R. 1169; 42 Can. Crim. Cas. 56; 56 N. S. R. 549.—**CAN.**

538a. Question of jurisdiction of colonial court—To issue mandamus to inferior court.]—The Supreme Ct. of Ontario has jurisdiction to mandamus a county ct. judges criminal ct. to try, according to the procedure provided by Criminal Code of Canada, s. 827, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules have been made as to the issue of a mandamus in a criminal matter does not preclude the Supreme Ct. from exercising its full powers.

Special leave to appeal to the Privy Council was granted upon a petition alleging two grounds: (1) that the Supreme Ct. had not jurisdiction to issue a mandamus in the circumstances above referred to, & (2) that under the Criminal Code the persons indicted had not the option given by sect. 827 to be tried without a jury. Special leave was granted on the first ground; the question whether the appeal could be entertained was reserved:—*Held:* the appeal should be dismissed, since the ground upon which special leave was given failed, & the second ground was merely a question of procedure & was not one upon which an appeal would be entertained.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011; 94 L. J. P. C. 21; 132 L. T. 210; 40 T. L. R. 814, P. C.

Annotation:—**Refd.** Nadan *v.* R., [1926] A. C. 482.

538b. Question of procedure.]—A.-G. FOR ONTARIO *v.* DALY, No. 538a, *ante*.

542. *Add. Annotations:*—**Refd.** Umra *v.* R. (1924), 41 T. L. R. 86; Nadan *v.* R., [1926] A. C. 482.

549. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

549a. ——— ———.]—NADAN *v.* R., No. 91a, *ante*.

549b. ——— ——— **Misinterpretation of statute.]**—The contention that in a criminal case a ct. in India has come to a wrong conclusion upon the interpretation of an Indian statute is not necessarily tantamount to an allegation of substantial & grave injustice such as to induce the Privy Council to give special leave to appeal.—UMRA *v.* R. (1924), 41 T. L. R. 86, P. C.

559. *Add. Annotations:*—*As to* (1) **Consd.** Umra *v.* R. (1924), 41 T. L. R. 86; Nadan *v.* R., [1926] A. C. 482.

560. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

586a. Discretion of court below—Judicial Committee will not interfere—Though members of court below disagree.]—Under Civil Code of Quebec, art. 189, a husband or wife may demand a separation on the ground of "outrage, ill-usage, or grievous insult"; & by art. 190: "The grievous nature & sufficiency of such outrage, ill-usage & insult, are left to the discretion of the ct., which, in appreciating them, must take into consideration the rank, condition & other circumstances of the parties." In such a case the Judicial Committee will be very reluctant to interfere with the discretion of the ct. below, even where there has been a great difference of judicial opinion, unless it appears that there has been a miscarriage of justice.—BALDWIN *v.* BALDWIN (1922), 91 L. J. P. C. 208; 128 L. T. 10, P. C.

598. *Add. Annotation:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

606. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

608. *Add. Annotation:*—**Refd.** A.-G. of British Columbia *v.* A.-G. of Canada, [1924] A. C. 222.

621. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

626. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

640a. ——— ——— If merely advisory.]—Applts. claimed to deduct from the income on which they had been assessed a sum paid to underwriters on an issue of preference shares on the ground that it was "expenditure incurred for making profits in their business" within Indian Income Tax Act, 1918. The collector of taxes, the chief revenue authority, & the High Ct. successively decided against them. They then appealed to His Majesty in Council:—*Held:* on a preliminary objection, the decision, judgment, or order made by the High Ct. under Indian Income Tax Act, 1918, s. 51, was merely advisory & not final, & the appeal to His Majesty in Council was, therefore, incompetent.—TATA IRON & STEEL Co. *v.* BOMBAY CHIEF REVENUE AUTHORITY (1923), L. R. 50 Ind. App. 212; 39 T. L. R. 268, P. C.

640b. ——— Order of High Court—On appeal from application to district judge to file award.]—An appeal to the Privy Council lies under

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PART IX. SECT. 8, SUB-SECT. 1.

605 i. ——— ——— *Operation of Australian Judiciary Act, 1903.]—Judiciary Act, 1903-1920, s. 39 (2) (a), excludes an appeal as of right to the Privy Council from a decision of the Supreme Ct. exercising Federal jurisdiction, & gives to the High Ct. jurisdiction to entertain an appeal from such a decision.—LIMERICK S.S. Co. *v.* COMMONWEALTH OF AUSTRALIA (1924), 35 C. L. R. 69; 25 S. R. N. S. W. 293; 31 Argus L. R. 153.—AUS.

PART IX. SECT. 8, SUB-SECT. 2.

i i. ——— ———.]—Applt. co., having been held liable for approximately $7,000, appealed giving security only for $500 for the costs of the appeal. The appeal having been dismissed, applts. applied for a stay of proceedings pending a projected appeal to the Judicial Committee of the Privy Council:—*Held:* the application as made could not be granted.—PHOENIX FIRE INSURANCE CO. OF NEW YORK *v.* MCPHERSON, [1925] 3 D. L. R. 131; [1925] S. C. R. 104.—CAN.

ag. *Appeals pending in Supreme Court & before Privy Council—Stay of proceedings in Canadian appeal.]**—Where, A. & B. being co-defts., A. had first inscribed an appeal for hearing in the Supreme Ct. of Canada, & B. later on had inscribed an appeal to the Judicial Committee of the Privy Council, upon motion on behalf of B. the proceedings on the first appeal were stayed pending the decision of the Privy Council upon B.'s appeal.—ASHBRIDGE *v.* SHAVER & HARRISON, [1925] 4 D. L. R. 1048; [1925] S. C. R. 594.—CAN.

PART IX. SECT. 8, SUB-SECT. 3.

a i. ——— *From interlocutory judgments.]—Appeals on matters interlocutory in their nature should be allowed to be preferred to His Majesty in Council only when their decision will practically put an end to the litigation & finally decide the rights of the parties.—BHAGWATI DAYAL *v.* DHAN KHUNWAR (1925), I. L. R. 48 All. 329.—IND.

639 ii. ——— *From order refusing to enrol legal practitioner.]—An order of the High Ct. refusing to enrol a person as a legal practitioner under Legal Practitioners Acts, 1879, is not one from which the High Ct. has jurisdiction to grant leave to appeal to the Privy Council.—*Re* Miss (1923), I. L. R. 1 Pat. 590.—IND.

b i. ——— *Valuation of property compulsorily acquired.]—In appeals involving the valuation of property in India, the Judicial Committee will entertain an appeal under Act XIX, 1921, s. 2, as to the value of property compulsorily acquired only upon questions of principle, including errors in appreciating or applying the rules of evidence, or the judicial methods of weighing evidence.—NOWROJI RUSTOMJI WADIA *v.* BOMBAY GOVERNMENT (1923), I. L. R. 48 Bom. 190.—IND.

Code of Civil Procedure, 1908, s. 109, from a decree or final order of a High Ct. made upon appeal from an order of a district judge upon an application to him to file an award in ct. The appeal is not precluded by sect. 104 (2) of the Code; that provision applies only to an appellate order of a district judge where the application has been made to a subordinate judge.—RAMLAL HARGOPAL v. KISHANCHAND (1923), L. R. 51 Ind. App. 72, P. C.

662. *Add. Annotation:* **Refd.** Nadan v. R., [1926] A. C. 482.

Part XII.—Irish Free State.

713. *Add. Citation:*—21 L. G. R. 419, C. A.

714. For the paragraph in the original volume substitute the following paragraph:—

—— **Transference of liabilities of British Government to Irish Free State.**]—By agreements made in 1917, during the war with Germany, it was agreed between the British Govt. & resp. co., that the co. should make certain alterations in their railway lines in order to facilitate the carriage of coal from certain collieries for purposes connected with the war, the Govt. undertaking to reinstate the lines after the conclusion of the war. In 1922, Irish Free State (Agreement) Act, 1922 (c. 4), & Irish Free State Constitution Act, 1922 (session 2) (c. 1), were passed. At the date of the passing of these Acts the contracts with the Govt. were still executory:—*Held:* the effect of these Acts, & of the Orders made under them, was to transfer the liability under the contracts of 1917 from the British Govt. to the Govt. of the Irish Free State.—A.-G. v. GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND, [1925] A. C. 754; 94 L. J. K. B. 772; 133 L. T. 508; 41 T. L. R. 576; 69 Sol. Jo. 744, H. L.; *revsg.* S. C. *sub nom.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND v. R., [1924] 2 K. B. 450, C. A.

714a. —— **Effect of on Judgments Extension Act, 1868 (c. 54).**]—The effect of Irish Free State Constitution Act, 1922 (session 2) (c. 1), s. 1, & art. 73 of the Schedule thereto, & of Irish Free State (Consequential Provisions) Act, 1922 (session 2) (c. 2), s. 1 (1), is that Judgments Extension Act, 1868, has, since Dec. 5, 1922, ceased to apply to the Irish Free State.—BANFIELD v. CHESTER (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.

—— ——.]—*See, also*, No. 716.

716. *Add. Citations:*—[1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269.

Add. Annotation: **Folld.** Banfield v. Chester (1925), 94 L. J. K. B. 805.

Notes on Canadian Constitutional Cases

(Vol. XVII., p. 508).

Cases coming under this head decided since the publication of the original volume have been included on pp. 406–410, *ante*.

PART IX. SECT. 8, SUB-SECT. 4.

k (p. 503) i. —— —— —— —— *Judges equally divided.*]—The Ct. of Appeal granted leave to appeal to the Privy Council from a decision of the Ct. of Appeal reversing an order for a new trial, the verdict of the jury being for more than £500, & the judges, including the trial judge, being equally divided.—TREMAIN v. MANAWATER DRAINAGE BOARD, [1926] N. Z. L. R. 416.—N.Z.

PART XII.

st. *Irish Free State (Agreement) Act, 1922 (c. 1)—Effect on Companies Acts.*]—On petition by a shareholder for the compulsory winding up of a co. as an unregistered co.: *Held:* notwithstanding the provisions of the above act & of the Orders thereunder, the Cos. Acts remain in full force until revoked or altered by a competent legislature, & the cts. of Southern Ireland had no jurisdiction to make the order.—*Re* PORTARLINGTON ELECTRIC LIGHT & POWER CO., LTD., [1922] 1 I. R. 100.—IR.

sw. *Power of Oireachtas.*]—Within the whole area of the Irish Free State, the Oireachtas is a free & unfettered legislature, & there is nothing in the treaty, the constitution, or the statute confirming them, to limit the power of the Oireachtas to authorise the detention of untried persons.—R. (O'CONNELL) v. HARE PARK CAMP (MILITARY GOVERNOR), [1924] 2 I. R. 104.—IR.

sz. —— *Public Safety (Powers of Arrest & Detention) Temporary Act (I. F. S.), 1924. Intra vires.*]—R. (O'CONNELL) v. HARE PARK CAMP (MILITARY GOVERNOR), [1924] 2 I. R. 104.—IR.

DESCENT AND DISTRIBUTION.

Part IV.—Descent of Real Estate.

133. After this case insert "—— **Liability to legacy duty.**]—*See* ESTATE & OTHER DEATH DUTIES, Vol. XXI., p. 58, No. 377."

134a. Construction of ancient customary "Nepos."]—WHITLOCK *v.* WHITLOCK (1924), 40 T. L. R. 566, D. C.

Part V.—Distribution of Personal Estate.

165a. —— —— Subject to interest of posthumous child.]—Distributory share vests on the intestate's death, but not so as to exclude a posthumous child.—EDWARDS *v.* FREEMAN (1727), 2 P. Wms. 435; 24 E. R. 803, L. C.

Folld. Wallis *v.* Hodson (1740), Barn. Ch. 272. **Reld.** Villar *v.* Gilbey, [1907] A. C. 139. **Mentd.** Evelyn *v.* Evelyn (1731), 2 P. Wms. 659; Morris *v.* Burroughs (1737), 1 Atk. 399; Green *v.* Ekins (1742), 2 Atk. 473; Parsons *v.* Parsons (1744), 9 Mod. Rep. 461; Elliot *v.* Collier (1747), 3 Atk. 526; Boyd *v.* Boyd (1867), L. R. 4 Eq. 305; Taylor *v.* Taylor (1875), L. R. 20 Eq. 155; *Re* Blockley, Blockley *v.* Blockley (1885), 29 Ch. D. 250; *Re* Ford, Ford *v.* Ford (1901), 46 Sol. Jo. 51.

—— ——.]—J. W. died intestate in 1724, & left issue T. W. who died within a week after his father, & his wife enceinte, & on May 20 following pltf. was born; she is entitled to her share under the Statute of Distributions, as much as if she had existed in his lifetime.—WALLIS *v.* HODSON (1740), 2 Atk. 114; Barn. Ch. 272; 26 E. R. 472,

Folld. Burnet *v.* Mann (1748), 1 Ves. Sen. 156. **Consd.** Thellusson *v.* Woodford (1799), 4 Ves. 227. **Reld.** Thellusson *v.* Woodford (1805), 1 Bos. & P. N. R. 357; Villar *v.* Gilbey, [1907] A. C. 139.

165c. —— ——.]—A child *en ventre sa mère* may take under the Statute of Distribution.—THELLUSSON *v.* WOODFORD (1799), 4 Ves. 227; 31 E. R. 117, L. C.; *affd.* (1805), 1 Bos. & P. N. R. 357, H. L.

Annotations:—**Reld.** Blackburn *v.* Stables (1814), 2 Ves. & B. 367; *Re* Burrows, Cleghorn *v.* Burrows, [1895] 2 Ch. 497; *Re* Wilmer's Trusts, Moore *v.* Wingfield, [1903] 1 Ch. 874; Villar *v.* Gilbey, [1907] A. C. 139. **Mentd.** Godfrey *v.* Davis (1801), 6 Ves. 43; St. Paul's *v.* Morris (1804), 9 Ves. 316; Underhill *v.* Horwood (1804), 10 Ves. 209; Beard *v.* Westcott (1813), 5 Taunt. 393; Southampton *v.* Hertford (1813), 2 Ves. & B. 54; Cadell *v.* Palmer (1833), 10 Bing. 140; Doe d. Winter *v.* Perratt (1843), 6 Man. & G. 314; Cooke *v.* Turner (1844), 14 Sim. 218; Nightingale *v.* Goulbourn (1848), 2 Ph. 594; Egerton *v.* Brownlow (1853), 8 State Tr. N. S. 193; Langdale *v.* Briggs (1856), 8 De G. M. & G. 391; Turvin *v.* Newcome (1856), 3 K. & J. 16; Thellusson *v.* Rendlesham (1859), 7 H. L. Cas. 429; Eastern Counties, etc. Cos. *v.* Marriage (1860), 9 H. L. Cas. 32; Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531; *Re* Stamford & Warrington, Payne *v.* Grey, [1911] 1 Ch. 255.

See, now, Administration of Estates Act, 1925 (c. 23), ss. 47 (1), 55 (2).

173. *Ad. Annotation:*—**Consd.** *Re* Jones, Johnson *v.* A.-G., [1925] Ch. 310.

256. *Add. Annotation:*—**Consd.** *Re* Merrall, Greener *v.* Merrall, [1924] 1 Ch. 45.

Part VII.—Escheat and bona vacantia.

292. *Add. Annotation:*—**Reld.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56.

311. *Add. Citations:*—[1924] 2 Ch. 19; 93 L. J. Ch. 483; 130 L. T. 800; 68 Sol. Jo.

329. *Add. Annotation:*—**Reld.** *Re* Cullum, Mercer *v.* Flood, [1924] 1 Ch. 540.

345. *Add. Annotation:*—**Mentd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

PART I.

A. C. 746; 93 L. J. P. C. 1 L. T. 582. **NIGERIA.**

PART III. SECT. 1.

v.

IR.

1 I. R. IR.

PART V. SECT. 3, SUB-SECT. 3.—A.

213 I.

on his marriage executed a bond, in the event of his death in the of of was I to in trust for F. I d his wife, —*Held:* the I by the was to be re- in the of other intention, of the widow's of her Do R 201. —IR

PART V. SECT. 4, SUB-SECT. 1.

229 v. ——.]—The words "child or children of a brother or sister" in Act, R. S. A., 7 —— in the first generation only, & do not include grandchildren or more remote descendants.—*Re* EMERY (ALTA.), [1925] 1 W. W. R. 816.—**CAN.**

PART V. SECT. 6.

ad. Not widow of only pre- rasing intestate.]—*Re* 25] 4 D. L. R. 12.—**CAN**

DISCOVERY, INSPECTION, AND INTERROGATORIES.

Part I.—In General.

10. *Add. Annotation :*—**Mentd.** Lapish v. Braithwaite, [1925] 1 K. B. 474.

Part II.—Discovery of Documents.

99. *Add. Annotation :*—*As to* (2) **Apld.** Cavendish v. Cavendish (1925), 42 T. L. R. 131.

126. *Add. Annotation :*—**Folld.** Seddon v. Commercial Salt Co. (1924), 69 Sol. Jo. 159.

127. *Add. Annotation :*—**Overd.** Seddon v. Commercial Salt Co., [1925] Ch. 187.

127a. —— ——.]—By an underlease lands & works were demised to the first defts. for the term of twenty-one years less one day. The underlease contained a covenant by these defts. that they would not assign, transfer or part with possession of the demised premises or any part thereof without the consent of the underlessor, & that in case of the breach of such covenant it should be lawful for the underlessor to re-enter upon the demised premises, & that thereupon the demise should absolutely determine. Pltf., the purchaser of the reversion on the underlease, brought an action to recover possession of the premises. By his statement of claim he alleged that the first defts., in breach of their covenant, had transferred, underlet or parted with the possession of the premises to the second defts., &/or the third defts. By their respective defences defts. traversed the allegations in the statement of claim. On a summons taken out by pltf. asking that the second defts. might be ordered to file a full & sufficient affidavit of documents, the judge, considering himself bound by *Poeis (Earl)* v. *Negus*, No. 127, made the order asked for: *Held:* there was one issue only between pltf. & the three defts., namely, whether the underlease, subject to which pltf. as he alleged derived his title to the possession of the land in question, was still subsisting or had been determined by the exercise by pltf. of his of re-entry, & that being so, the tablished rule that the ct. would not a forfeiture by ordering discovery of s applied, & the order made a the second defts. must be dis *Poeis (Earl)* v. *Negus*, No. 127, overd.—SEDDON v. COMMERCIAL SALT CO., LTD., [1925] Ch. 187; 94 L. J. Ch. 225; 132 L. T. 437; 69 Sol. Jo. 159, C. A.

171. *Add.* *As to* (2) **Consd.** Soviet Republics Union v. Belaiew (1925), 42 T. L. R. 21. **Reld.** Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

242. *Add. Annotation :* **Consd.** Godman v. Times Publishing Co., [1926] 2 K. B. 273.

279. *Citations :* For "BITT. PRAC. CAS. 1" read "BITT. PRAC. CAS. 13."

324. *Add. Annotation :* **Consd.** Godman v. Times Publishing Co., [1926] 2 K. B. 273.

373a. .] THE CITY OF BARODA. No. 871a, *post.*

378. *Add. Annotation :* **Mentd.** Huyton & Roby Gas Co. v. Liverpool Corpn. (1925), 42 T. L. R. 116.

379. *Add. Annotation :* **Mentd.** Parkinson v. College of Ambulance & Harrison, [1925] 2 K. B. 1.

394. *Add. Annotations :* *As to* (2) **Folld.** The Hopper No. 13, [1925] P. 52. **Apld.** The City of Baroda (1926), 134 L. T. 576.

456. *Add. Citations :* 93 L. J. K. B. 109; 130 L. T. 139; 10 Asp. M. L. C. 236.

468. After this case add "For form of order for production of ship's papers, *see* R. S. C. (No. 1), 1915, r. 11."

PART II. SECT. 4, SUB-SECT. 1.

130 lv. — —.]—BAILIE v. INGLIS & Co., Ltd. & JAMISON, [1926] N. 53.—**IR.**

PART II. SECT. 5, SUB-SECT. 1.

se. *Not till issues* .]—When it is necessary, before order for

in be ed, the proper order to make is that the suit should be set down for the settlement of the issues. The judge will then be in a position to decide which of the issues are necessary t mined before the question of or discovery can be decided.—EAGLE Co. v. DINANATH 22), I. L. R. 47 om. 509.—**IND.**

PART II. SECT. 9, SUB-SECT.

in specified [— BITT IBITT v. NATIONAL.], 31 B. C. R.

CAN.

PART II. SECT. 9, SUB-SECT. 5.

370 lii. — —.]—When in an affidavit in t of any in direc & not to a

SASE & Co., Ltd. 9 L. L. T. 161.—**IR.**

PART II. SECT. 10.

an order r discovery, & sit of very it was a document in his lely to pltf not an to the of application was R. 276, r. 2 L. R. 552.—

Part III.—Production and Inspection.

539. *Add. Annotation :*—**Reld.** Godman v. Times Publishing Co., [1926] 2 K. B. 273.

714. *Add. Annotation :*—*As to* (1) **Distd.** The City of Baroda (1926), 134 L. T. 576.

805a. ——.]—Completed drafts of documents [settled by counsel] in support of an application for the fiat of the A.-G. to counterclaim for revocation of a patent are privileged documents, & defts. are not bound to produce them for inspection by pltfs.—VIGNERON-DARL (BRITISH & COLONIAL), LTD. v. PETTIT (1925), 69 Sol. Jo. 693; 42 R. P. C. 431.

823. *Add. Annotation :*—*As to* (1) **Apld.** The City of Baroda (1926), 134 L. T. 576.

874a. . . . . . .] Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery :—*Held :* (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents. THE CITY OF BARODA (1926), 134 L. T. 576; 70 Sol. Jo. 1014; 17 Asp. M. L. C. 27.

891a. ——.]—In obedience to general instructions issued by the Port of London Authority to the masters of their vessels that, in the event of a casualty, the circumstances of the occurrence were to be reported on a printed form supplied for the purpose, the master of one of the Authority's dredgers reported the details of a collision with a sailing barge belonging to pltfs. The form was headed, "Confidential report for the information of the Authority's solr. . . ." The report was sent to the master's superior officers, who passed it on to the manager of the Authority's insurance department, & he in turn sent it to the solrs. who acted for the Authority's underwriters. Pltfs. contended that the report must be produced :—*Held :* there having been a collision it was to be anticipated that there would be litigation, & although the report went through various hands, it was made for the purpose of being put before the solrs.; the report therefore complied with the tests laid down by BUCKLEY, L.J., in *Birmingham & Midland Motor Omnibus Co.* v. *London & North Western Ry. Co.*, No. 394, *ante*, & was privileged from production.—THE HOPPER No. 13, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

Annotation :—**Distd.** The City of Baroda (1926), 134 L. T. 576.

905. *Add. Annotation :*—**Reld.** The Hopper No. 13, [1925] P. 52.

1144. *Add. Citation :*—1 Leach, 300, n.

Add. Annotation :—**Reld.** R. v. Elworthy (1867), 37 L. J. M. C. 3.

1197. *Add. Annotation :*—**Reld.** Seddon v. Commercial Salt Co., [1925] Ch. 187.

1198. *Add. Annotation :*—**Reld.** Waterhouse v. Barker (1924), 132 L. T. 15.

1212. *Add. Annotation :*—**Consd.** Isaacs v. Cook, [1925] 2 K. B. 391.

1218. *Add. Annotation :*—**Consd.** Isaacs v. Cook, [1925] 2 K. B. 391

1285. *Add. Annotation :*—**Mentd.** *Re* Southerden, Adams v. Southerden, [1925] P. 177.

PART III. SECT. 5, SUB-SECT. 1.

r. . . . . . .] In an action on a policy of insurance against liability for damages, to recover the amount of a judgment which the insured had paid & which had been recovered against them in an action in which the insurance co. had conducted the defence :—*Held :* pltfs. were entitled on discovery to know all that was done by the insurance co. in defending the action & to see all papers & documents connected therewith, & also were entitled to the benefit of all investigations made, & opinions obtained, by the co.—WILLIAMS v. LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 1 W. W. R. 1023.—**CAN.**

PART III. SECT. 5, SUB-SECT. 5.—F.

gf. (*General rule.*)—In the case of public documents there is a common law right of inspection, but that right must necessarily be exercised within certain limits. The right ought to be restricted to those persons who can prove themselves to be interested, & there are documents which, for reasons of State, ought not to be disclosed.—*Re* FITZGERALD, [1925] 1 I. R. 42.—**IR.**

gk. *Register of titles to land kept under Local Registration of Title (Ireland) Act*, 1891 (c. 66).]—The above register is a public register, & the documents kept in the office for registration of titles are public documents.—*Re* FITZGERALD, [1925] 1 I. R. 42.—**IR.**

PART III. SECT. 6.

gl. —— *May be dispensed with.*]—The master has jurisdiction to provide, in an order for directions which calls for the production of documents, that "the service of a notice to produce such documents be dispensed with & that the service of a copy of this order upon the solrs. of the respective parties shall have the same effect as the service of a notice to produce."—ROYAL TRUST CO. v. CANADIAN PACIFIC RY. CO., [1925] 4 D. L. R. 772; [1925] 3 W. W. R. 571.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—C. (b).

gn. —— *Letter included in—Not privileged.*]—MOFFATT v. HANGAR, [1923] N. Z. L. R. 448.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.—H.

gq. *Privileged — Communication with view to compromise—Copy not retained by solicitor.*]—*Held :* although the occasion on which the document was written was not privileged, the document, owing to its nature & effect, was privileged from production.—MOFFATT v. HANGAR, [1923] N. Z. L. R. 448.—**N.Z.**

Part IV.—Interrogatories.

1314. *Add. Annotation :—As to* (1) **Consd.** Sutherland *v.* British Dominions Land Settlmt. Corpn., [1926] Ch. 746.

1343. *Add. Annotation :—***Mentd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

1345. *Add. Annotation :—***Mentd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

1360. *Add. Annotation :—***Mentd.** Soviet Republics Union *v.* Belaiew (1925), 134 L. T. 64.

1444. *Add. Annotation :—***Consd.** Sutherland *v.* British Dominions Land Settlmt. Corpn., [1926] Ch. 746.

1462a. —— —— ——.]—The owners of the steamship *N.*, one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the *N.* & the owners of the other ship, the *S.*, & also by the owners of cargo on the *S.* The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the *S.*, who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the *S.* Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the *S.*; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the *S.* :—*Held :* the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. C., Ord. 31, r. 2, & must be allowed. No. 4 was not pressed.—The Nedeknes (1924), 41 T. L. R. 243.

1464. *Add. Annotation :—***Refd.** Perlak Petroleum Maatschappij *v.* Deen (1923), 93 L. J. K. B. 158.

1465. *Add. Citations :* 93 L. J. K. B. 158; 130 L. T. 234.

1531. *Add. Annotation :* **Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

1532. *Add. Annotation :—***Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675.

1549. *Add. Annotation :—***Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

1555. *Add. Annotations :—***Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675. **Mentd.** Sutherland *v.* Stopes (1924), 41 T. L. R. 106.

1571. *Add. Annotations :—***Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675. **Mentd.** Sutherland *v.* Stopes (1924), 41 T. L. R. 106.

PART IV. SECT. 1.

r 1. —— ——.]—Under r. 328 a foreign pltf. has not a *prima facie* right to be examined for discovery at his place of residence. The place & manner of his examination are matters to be determined by the ct., having regard to what is "just & convenient."—Swerny *v.* Manufacturers Holding Corpn., [1924] 2 D. L. R. 296; 54 O. L. R. 250.—CAN.

PART IV. SECT. 3.

f (p. 184) i. ——.]—Rule 267 (Sask.) provides that a person for whose immediate benefit an action is prosecuted or defended shall be regarded as a party for the purpose of examination in discovery, but where a party to the action wishes to avail himself of the rule & the pleadings do not disclose that the action has been brought for the immediate benefit of the person sought to be examined, the registrar is not in a position to say that the party seeking the appointment is entitled to examine such person, & he should therefore not issue an appointment without an order of the ct. or a judge.—Johnson *v.* Hawkins, [1924] 3 D. L. R. 524; [1924] 2 W. W. R. 985.—CAN.

f (p. 184) ii. ——.]—In order to obtain an order for the examination for discovery of a person who is not a party to the action, applt. must show that pltf. in whose name the action was brought is not really pltf., but that the person whose examination is asked for is the real pltf. & that the action is being prosecuted for his benefit.—Canadian Credit Men's Trust Assocn. *v.* Morton, [1925] 1 W. W. R. 772.—CAN.

ai. *Person for whose immediate benefit action defended—Beneficiary under will—Action against trustees.*]—In an action against trustees under a will to rescind a contract for the sale of property of the estate :—*Held :* a beneficiary who was entitled to the rents & profits of such property, whether sold or not, was not "a party for whose immediate benefit the action was defended," & was not examinable for discovery.—Woolworth Co. *v.* Pooley, [1925] 2 W. W. R. 481. CAN.

g (p. 185) i. —— *Co-defendant not actively defending.*]—Where pltfs. sued C. & G. to recover the balance of the purchase-price of land, & C. did not defend otherwise than by delivering demand of notice, & G. alleged that C. shared in a secret commission paid by one of the pltfs. to procure G. to enter into the agreement of purchase :—*Held :* G. was not a person "adverse in interest" to C. so as to make C. examinable for discovery by G. under r. 234.—Hegler *v.* MacNab, [1924] 3 D. L. R. 501; [1924] 2 W. W. R. 649.—CAN.

e (p. 186) i. ——.]—Under County Ct. Ord. 8, r. 17, an infant, a party to an action, may be examined by the opposite party for discovery before the trial.—Lancaster *v.* Vaughan (1924), 33 B. C. R. 159.—CAN.

l (p. 186) i. —— —— .]—Deft., in an action by a corpn., has a right to select the officer of the corpn. whom he will examine.—Trinity College *v.* Levinter, [1924] 2 D. L. R. 584; 54 O. L. R. 290.—CAN.

l (p. 186) ii. —— ——.]—In an action for libel against the publishers of a newspaper, wherein the only questions in issue were those of malice & damages, an order was made designating an officer of deft. co. as its officer to be examined for discovery as to matters affecting damages.—Kaft *v.* Star Publishing Co., [1925] 1 W. W. R. 774.—CAN.

o (p. 186) i. —— ——.]—An order may be made for the examination of a deft. corpn. by its officer outside the jurisdiction. The question is one of convenience.—Caven *v.* Canadian Pacific Ry. Co., [1924] 2 D. L. R. 1112; [1924] 2 W. W. R. 200.—CAN.

f (p. 188) i. —— —— .]—In an action against a landlord for damages for illegal distress, the bailiff not being a party to the action is not examinable for discovery.—Harvey *v.* Sylvia Court, Ltd., [1924] 3 W. W. R. 940.—CAN.

PART IV. SECT. 4.

m i. — —.]—While a judge or master in chambers has jurisdiction to direct that a party shall not examine an opposite party for discovery until the examining party has himself made discovery of documents, such jurisdiction should be exercised only under special circumstances.—Miller *v.* Great West Natural Gas Corpn., Park Hersey Iron Tank & Lead Co. *v.* Great West Natural Gas Corpn. (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—CAN.

sm. *After amendment of pleadings.*]—If a party, after all discovery ordered has been made, desires to amend his pleadings & then desires to have a further examination for discovery, this can be granted by a judge or master under r. 234.—Miller *v.* Great West Natural Gas Corpn., Park Hersey Iron Tank & Lead Co. *v.* Great West Natural Gas Corpn. (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—CAN.

PART IV. SECT. 5, SUB-SECT. 9.

1457 i. *How far admissible.*]—In a suit to set aside an agreement on the ground of fraudulent misrepresentations :—*Held :* defts. was entitled to ask for the substance of the conversations.—West *v.* Conway (1923), 23 S. R. N. S. W. 344; 40 N. S. W. W. N. 50.—AUS.

1705a. Shares—Refusal of company to register transfer—Grounds for refusal.]—Art. 27 of a co.'s arts. of assocn. was as follows: "The directors may without assigning any reason decline to register any transfer of shares not fully paid up made to any person not approved by them or made by any member jointly or alone indebted or under any liability to the co." Pltf. was the holder of 10,000 partly paid cumulative preference shares of £1 each in the co., & in Dec. 1925, executed a transfer of 8,000 of these shares to a transferee. Registration of the transfer was refused, & pltf. brought an action claiming a declaration that deft. co. was not entitled to refuse registration of the transfer & rectification of the co.'s register accordingly. Earlier in 1925 the co. had issued debentures secured by a debenture trust deed, in which the co. covenanted with the trustees that it would not in regard to 100,000 preference shares register until the shares were fully paid any transfer of any of them to any proposed transferee not approved by the trustees, & would not, except with the previous written consent of the trustees, release any of the holders of these shares from any money payable or which might become payable in respect of such shares. Pltf. alleged by his statement of claim that deft. co. had wrongfully refused to register the transfer, that the directors did not exercise any proper discretion under the arts., & that they had abdicated their discretion by entering into the above covenant with the trustees. Defts. by their defence claimed to have exercised the discretion under the art. *bonâ fide*. Pltf. sought to interrogate deft. co. by asking: (1) Whether the co. said that the directors had declined registration in exercise of the power to decline to register any transfer made to any person not approved by them or in exercise of the power to decline to register any transfer by a member jointly or alone indebted to the co.; (2) whether they said that the transfer was to a person of whom the directors did not approve; (3) whether they said pltf. was in fact a person jointly or alone indebted to the co.; (4) whether the debenture trust deed was referred to by any one at any meeting at which the question of registering the transfer was discussed: *Held*: all the interrogatories were proper to be allowed. Deft. co. was not entitled to refuse to state which of the grounds mentioned in the art. the directors had acted under, although it might refuse to say what reasons influenced them in exercising their discretion upon that ground.—SUTHERLAND (DUKE) *v.* BRITISH DOMINIONS LAND SETTLEMENT CORPN., LTD., [1926] Ch. 746; 95 L. J. Ch. 542; 135 L. T. 732.

1710. *Add. Citations*:—93 L. J. K. B. 158; 130 L. T. 234.

1817. *Add. Annotation*:—**Refd.** Cavendish *v.* Cavendish (1925), 42 T. L. R. 131.

1855. *Add. Annotation*:—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

1895. *Add. Annotation*:—**Refd.** British Thomson-Houston Co. *v.* British Insulated & Helsby Cables, [1924] 2 Ch. 100.

PART IV. SECT. 5, SUB-SECT. 15. F.

1590 i. *Document in hands of third party.*] On examination for discovery the party being examined can be asked to tell what are the contents of a document not under his control & not produced to him. HARRISON *v.* KISO, [1925] 1 D. L. R. 1072; [1925] 1 W. W. R. 619; 21 Alta. L. R. 373. **CAN.**

PART IV. SECT. 5, SUB-SECT. 15.—R.

1700 i. *Agency—Whether representations made by agent—Name of agent—Disclosed.*] WEST *v.* CONWAY (1923), 23 S. R. N. S. W. 344; 40 N. S. W. W. N. 50.—**AUS.**

an. *Action for alienation of affections.*] On examination for discovery in an action for alienation of affections, the wife having been deft.'s housekeeper, he may be required to answer the question whether he ever heard from her of any objection by her husband to her working at his house.—HARRISON *v.* KISO, [1925] 1 D. L. R. 1072; [1925] 1 W. W. R. 619; 21 Alta. L. R. 373.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 3.

1803 i. *Officers acting as solicitor—Claim of professional privilege.*]—*Held*: the fact that the chancellor of pltf. corpn was a member of the firm acting for the corpn. was not a reason for refusing to allow him to be examined: if he had as solr. information which pltf. corpn. had the privilege of preventing him from disclosing, the privilege could be exercised when a question was put as to something which he had learned in his professional capacity.—TRINITY COLLEGE *v.* LEVINTER, [1924] 2 D. L. R. 584; 54 O. L. R. 290.—**CAN.**

q i. —— *Equivalent to examination of corporation.*]—Under the present Alberta rules as to examination for discovery, there is no room for making any distinction between individual parties & corpn. parties, & the examination of a corpn.'s officer, selected in accordance with r. 250, is the examination of the corpn.—CAVEN *v.* CANADIAN PACIFIC RY. CO., [1924] 2 D. L. R. 1112; [1924] 2 W. W. R. 200.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 4.—B.

1813 xii. —— .] The provisions of Canada Evidence Act, R. S. C., 1906 (c. 145), & Alberta Evidence Act, R. S. A., 1922 (c. 87), that a witness shall not be excused from answering a question on the ground that the answer may tend to criminate him, do not apply to an examination for discovery, but his common law right to refuse to answer a question tending to criminate does apply: & on discovery the person examined may on such ground refuse to answer the question whether he has committed adultery.—HARRISON *v.* KISO (No. 2), [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407; 21 Alta. L. R. 381; *revg.*, [1925] 2 D. L. R. 1111; [1925] 2 W. W. R. 276. **CAN.**

PART IV. SECT. 8, SUB-SECT. 4.—C.

1847 i. *Communication with legal adviser or agents—Contract of employment or agency not established.*]—*Re* U.S.A. *v.* MAMMOTH OIL CO., [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307. —**CAN.**

PART IV. SECT. 8, SUB-SECT. 4.—D.

sp. *Disclosure of name of person on whose behalf privilege claimed.*] Privilege may be claimed without disclosing to the ct. the name of the client or person on whose behalf it is claimed.—*Re* U.S.A. *v.* MAMMOTH OIL CO., [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307.—**CAN.**

PART IV. SECT. 9.

1877 iv. —— .] Where the only question which appet. for an order for a re-examination for discovery wished to put was one which the party to be examined was entitled to refuse to answer, & his counsel stated that he would instruct him to refuse to answer it, the order was refused.—HARRISON *v.* KISO (No. 2), [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407; 21 Alta. L. R. 381.—**CAN.**

PART V. SECT. 3.

st. *Conditions precedent to order—Decision that questions properly put—Refusal to answer questions on further examination.*]—HANSON *v.* GILKANER, LTD., [1925] 3 D. L. R. 189.—**CAN.**

DISTRESS.

Part II.—Distress for Rent.

43. For the paragraph " Defts. were partners in business . . . for his quiet tenantship " substitute :—" Defts. were partners in business & one of them, in the name of the firm, signed a warrant of distress authorising a broker to levy off the goods of pltf. for rent due 'to me.' Pltf. held under a lease from the Board of Ordnance & defts. were sureties for pltf. :—*Held :* it was an illegal distress because the rent was not due to the partner authorising the distress but to the Board of Ordnance."

Add. Annotations : — **Refd.** The Koursk, [1924] P. 140 ; Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762. **Mentd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

63. *Add. Annotation :* As to (1) **Refd.** Carrington Manufacturing Co. v. Saldin (1925), 133 L. T. 432.

128. *Add. Annotation :* **Refd.** Prout v. Hunter, [1924] 2 K. B. 736.

421a. **Agreement with one of two joint tenants.**] Premises were demised to two persons jointly : one of them hired from applts. a piano under a hire-purchase agreement : *Held :* the piano was liable to distress for arrears of rent of the premises under Law of Distress Amendment Act, 1908 (c. 53), s. 4 (1), although the other of the joint tenants had not been a party to the hire-purchase agreement. CRAMAGE (A. W.), LTD. v. PAYNE (1925), 134 L. T. 222 ; 90 J. P. 14 ; 42 T. L. R. 138, D. C.

435. *Add. Annotation :* — **Mentd.** Gregg v. Richards, [1926] Ch. 521.

523. *Add. Annotation :* — **Consd.** Draghorn v. Moore, [1924] A. C. 53.

581. *Add. Annotation :* — **Refd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

583. *Add. Annotation :* As to (1) **Refd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

735. *Add. Annotation :* **Mentd.** Sorrell v. Smith, [1925] A. C. 700.

1271. *Add. Annotation :* — **Refd.** Elliott v. Boynton, [1924] 1 Ch. 236.

PART II. SECT. 4, SUB-SECT. 7. B. (a) i.

160 vii . . . .] A mtgee. of land who under an attornment clause distrains for arrears of interest or principal due under his mtge. can make a valid distress only on the goods & chattels of the mtgor. or his assigns, & the word " assigns " does not include a purchaser from the mtgor. under an executory contract of sale of land, even though such purchaser be actually in possession. KLEINMAN v. ISMAN, [1924] 2 D. L. R. 146 ; 1 W. W. R. 883 ; 18 Sask. L. R. 171. — **CAN.**

PART II. SECT. 5, SUB-SECT. 3.

261 ii. . . .] The remedy of distress is not available against the Crown, & the interest of the Crown cannot be affected by any distress made by the landlord. A.-G. FOR CANADA v. GORDON, [1925] 1 D. L. R. 651 ; 56 O. L. R. 18. — **CAN.**

PART II. SECT. 5, SUB-SECT. 12. A.

405 i. *General rule — Goods not privileged.*] — When a lessee sublets premises to a sub-lessee, the head landlord may distrain upon the goods of the sub-lessee for all the rent owing by the lessee. *Re* CHAMBERLAIN & PEERLESS BUMPER & ACCESSORIES, LTD., [1924] 4 D. L. R. 298.—**CAN.**

PART II. SECT. 5, SUB-SECT. 13.

ss. *Conditional Sales Act — Interest of seller under conditional sale.*] A landlord is not entitled to distrain on the interest of a seller in goods bought by the tenant under a conditional sale agreement, even though the above Act has not been complied with.—BELL & SCHIESEL v. JACOBSON & WEITZER, [1925] 2 D. L. R. 393 ; [1925] 1 W. W. R. 913. — **CAN.**

PART II. SECT. 6, SUB-SECT. 1.

440 iv. . . . .]—ALBERT v. STOREY, [1925] 4 D. L. R. 374.—**CAN.**

PART II. SECT. 9, SUB-SECT. 2.

566 iii. . . . .]—Where there was a crop payment lease, & prior to the lease there was a mtge. over the property & the mtgees. had exercised their right to take possession *Held :* the lessor had no right to distrain. R. v. SULLIVAN, [1924] 2 D. L. R. 429, 42 Can. Crim. Cas. 41 — **CAN.**

PART II. SECT. 12. SUB-SECT. 3. C. (a).

833 i. *Effect of Property seized under Absconding Debtors Act.*] Property seized upon a warrant issued under the above Act is not liable to the landlord for a year's rent, though notice of his claim is given to the sheriff before the delivery of the property to the trustees. STANTON v. JOHNSTON (1925), 1 All. 34. — **CAN.**

PART II. SECT. 13, SUB-SECT. 2.

880 i. *Bar to action for rent. Goods insufficient to satisfy rent.*] The existence of a distress is, until the sale, an answer to an action for rent, regardless of whether the distress is sufficient or not to satisfy the amount for which the levy is made. HAWES v. ANDREW, [1917] 2 W. W. R. 400 ; 34 D. L. R. 12 ; 10 Sask. L. R. 162. — **CAN.**

PART II. SECT. 17, SUB-SECT. 1. C.

a i. — . . .] To entitle a landlord to follow & distrain & sell goods which his tenant has removed from the demised premises it is necessary that the rent should be actually due at the time of the tenant's removal of the goods. If no rent is due at the date of removal, & the landlord follows & distrains & sells the goods for rent subsequently falling due, the distress & sale are illegal & the landlord is liable in damages. ZUROWINSKI v. BURKE, [1924] 4 D. L. R. 326 ; 3 W. W. R. 49. — **CAN.**

e i. — — *Necessity for.*] — A landlord on becoming aware that his tenant who was in arrear with his rent was removing the *invecta et illata*, prevented the tenant from doing so by force without any application to the ct. for an attachment or interdict :—*Held :* the landlord's hypothec was inoperative until an order of attachment was obtained from the ct., & the landlord was not entitled to prevent forcibly the removal of the *invecta et illata*. — RODDY v. JOHNSON (1923), 44 N. L. R. 180. **S. AF.**

PART II. SECT. 17, SUB-SECT. 1. F.

1000 iv. . . . .] A lease to C. provided that in case the lessee attempted to abandon the premises or to remove his goods & chattels so that there would not be a sufficient distress for three months' rent, the rent for the current & ensuing three months should immediately become due. The premises were in fact occupied by a co., of which C. was a shareholder & official, though no assignment of the lease was made. The co. proceeded to abandon the premises & to remove its goods, & the lessor distrained. *Held :* this clause did not justify a seizure of the co.'s goods, upon which there was no right to distrain for rent not in arrear. CANADA, LTD. v. WILLIAMS KITCHENS, LTD., [1924] 2 D. L. R. 1051, 2 W. W. R. 341. **CAN.**

PART II. SECT. 19, SUB-SECT. 4. E. (a) i.

a i. . . .] P. brought a replevin action, & the goods were delivered to him. The judgment in his favour was reversed, but return of the goods or damages for their detention was neither demanded nor adjudged : *Held :* as the obligees could in the replevin action have claimed & obtained an order for return of the goods or for damages, they could not claim it in an action on the replevin bond. PARRIS v. BRACKET, [1925] 1 D. L. R. 1076 ; [1925], S. C. R. 347. **CAN.**

PART II. SECT. 19, SUB-SECT. 4. F. (b).

ad. *Plaintiff ordered to return goods.*] Plff obtained possession of goods by virtue of an order for replevin & subsequently discontinued his action :—*Held :* the ct. had power to order the return of the goods. PASSARISI v. MARTIN, [1925] 2 D. L. R. 914 ; 58 N. S. R. 121. **CAN.**

PART II. SECT. 19, SUB-SECT. 5.— A. (b).

d i. — . . .]—Where a landlord follows & distrains & sells goods for

Part III.—Distress for Rates.

1378. *Add. Annotation :*—**Mentd.** L. & N. E. Ry. *v.* Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

1379. *Add. Annotation :*—**Mentd.** L. & N. E. Ry. *v.* Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

1420. *Add. Annotation :*—**Reld.** Gateshead Assessment Committee *v.* Redheugh Colliery, [1925] A. C. 309.

1424. *Add. Annotation :*—**Reld.** Pigg *v.* Weardale Union Tow Law Overseers (1923), 22 L. G. R. 17.

1431. *Add. Annotation :* *As to* (2) **Reld.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1471. *Add. Annotation :* *As to* (1) **Consd.** R. *v.* Norfolk JJ., *Ex p.* Porter (1926), 43 T. L. R. 53.

1472. *Add. Annotation :*—**Folld.** R. *v.* Norfolk JJ., *Ex p.* Porter (1926), 43 T. L. R. 53.

1491. *Add. Annotation :*—**Mentd.** Kingston Union *v.* Metropolitan Water Board, [1926] A. C. 331.

1588a. Costs of distress—Power to levy.]—The power given to Comrs. of Sewers by Sewers Act, 1833 (c. 22), s. 55, to levy the costs of a distress is limited in the cases of distress for sums under £20 by Distress (Costs) Acts, 1817 (c. 93) & 1827 (c. 17).—R. *v.* NORFOLK JJ., *Ex p.* PORTER (1926), 43 T. L. R. 53; 70 Sol. Jo. 1198; 90 J. P. Jo. 618, D. C.

Part IV.—Distress for Assessed Taxes.

1607. *Add. Annotation :*—**Reld.** R. *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250.

1609. *Add. Annotation :*—*As to* (1) **Reld.** Glamorgan County Council *v.* Glassbrook, [1924] 1 K. B. 879.

Part V.—Distress for Tolls.

1638. *Add. Annotation :* **Mentd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

1649. *Add. Annotation :* **Mentd.** Aylott *v.* West Ham Corpn., Sisson *v.* Same (1926), 95 L. J. Ch. 533.

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rent subsequently falling due, & the distress & sale are illegal:—*Held:* the *quantum* of damages is the full value of the goods lost to the tenant after allowing for depreciation, but exemplary damages cannot be awarded where the landlord considered that he was acting within his rights & did not act in a wanton or insolent manner in making the seizure.—ZUROTVINSKI *v.* DUKE, [1924] 4 D. L. R. 326; 3 W. W. R. 49.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

p i. ——— ———.)—Where a tenant under a lease has covenanted to pay all municipal taxes, the landlord, against whom the taxes are assessed, is a person liable therefor with the tenant under Mercantile Law Amendment Act, 1856, s. 5, & payment by the landlord to the creditor, the city, is a prerequisite to the landlord becoming entitled to the securities or to use the remedies of the city. But the city's right of distress is not a security under the Act, nor is it a remedy which, upon payment, the landlord can use.—*Re* HINGSTON-SMITH, *Ex p.* MACPHERSON ESTATE, [1924] 3 D. L. R. 844; 2 W. W. R. 1081; 34 Man. L. R. 312; 5 C. B. R. 41.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—A. 1427 l. *By whom made—Collector.*)—The right to serve notice & the right to receive payment of municipal taxes rest in the collector of taxes & not in the city, & the service of the notice is not a remedy of the city which, upon payment, the landlord is entitled to use against his tenant.—*Re* HINGSTON-SMITH, *Ex p.* MACPHERSON ESTATE, [1924] 3 D. L. R. 844; 2 W. W. R. 1081; 34 Man. L. R. 312; 5 C. B. R. 41.—**CAN.**

1427 li. ——— *Under Village Act, R. S. S., 1920 (c. 86).*)—The duties of the secretary-treasurer of a village under this Act do not include that of levying distress. Where no person is appointed by the Act for such purpose, the village must appoint some person when necessary, & where distress has been levied by a person not authorised, the village may subsequently ratify & adopt his acts.—MANITOBA OIL PRODUCTS, LTD. *v.* LANGENBURG VILLAGE, [1923] 4 D. L. R. 260; 3 W. W. R. 308.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—A. (b).

sm. *Measure of damages.*)—The seizure of goods, worth over $3,000 to satisfy a debt of $175 is an excessive seizure, & a village corpn. having made or ratified such an unauthorised seizure, was found liable in damages; & the measure of damages was the difference between the full value of the goods seized & the value of the goods necessary to be sold to realise the amount of the taxes & the incidental costs.—MANITOBA OIL PRODUCTS, LTD. *v.* LANGENBURG VILLAGE, [1923] 4 D. L. R. 260; 3 W. W. R. 308.—**CAN.**

PART IV. SECT. 1.

gi. ——— ———.)—Where several quarter sections are separately assessed, a seizure for taxes of goods belonging to a person other than the person taxed or owner of the land in possession thereof can be made only for the taxes owing with respect to the particular quarter section on which the goods are found.—SPRINGBANK MUNICIPALITY *v.* WALKER, [1923] 1 D. L. R. 925; [1925] 1 W. W. R. 697; 21 Alta. L. R. 344.—**CAN.**

g ii. ——— ———.)—Under Municipal District Act, R. S. A., 1922 (c. 110), the right to seize chattels lying on the land taxed, but not belonging to the person taxed, is limited to the case in which the person assessed is in actual occupation of the land.—SCOTT *v.* MUNICIPAL DISTRICT OF WOODFORD (ALTA.), [1925] 4 D. L. R. 783; [1925] 3 W. W. R. 727; *affg.*, [1925] 2 W. W. R. 576.—**CAN.**

Part VII.—Distress Damage Feasant.

1780. *Add. Annotation :*—Reld. Back v. Daniels (1924), 69 Sol. Jo. 160.

PART VII. SECT. 3, SUB-SECT. 1.—A

• (p. 445) l. —— *Notice — Under Stray Animals Act.*)—On an appeal from a summary conviction under the above Act for illegal impounding:—*Held:* the conviction should be quashed as the record did not show that the notice required by s. 34 was given to the poundkeeper.—STAHN v. PEUTERT (1922), 70 D. L. R. 285; [1922] 2 W. W. R. 835.—CAN.

PART VII. SECT. 3, SUB-SECT. 1.—B.

1918 i. *Must be a fit & proper pound.*)—Under Stray Animals Act, 1920, animals impounded must be placed in the pound provided by the municipal council under s. 9; & where a poundkeeper placed & kept horses upon a fenced quarter section owned by him & separated by a road allowance from the pound provided by the municipality & the fence being broken down, the horses escaped or were driven off:—*Held:* the municipality was liable under s. 9, as it must be taken to have assumed the risk of placing & keeping the horses in a place other than an authorised pound.—SINWICK v. ELLIOS, [1924] 2 W. W. R. 755.—CAN.

PART VII. SECT. 3, SUB-SECT. 1.—E.

k l. ——— ———.)—Where under Stray Animals Act, 1915, s. 27 (1), the posting of notices of sale of impounded animals were not complied with:—*Held:* the sale amounted to a conversion & the pound-keeper, & the municipality employing him, were liable in damages, as (1) the posting of two notices within the municipality & one outside it was not a compliance with the Act; (2) where animals are branded, the pound-keeper is guilty of negligence in failing to mention the brands in the notices.—LEACH v. MANITOBA RURAL MUNICIPALITY No. 262 & MOIR, [1921] 1 W. W. R. 132; 56 D. L. R. 735; 14 Sask. L. R. 25.—CAN.

k ll. ——— ———.)—Where there is nothing indicating the presence of a brand on an impounded animal the poundkeeper is not obliged to feel all over its body in search of a possible brand, in order properly to describe the animal in the prescribed advertisement.

The sale of an impounded horse by a poundkeeper:—*Held:* defective because notices of the impounding & of the sale had not been properly posted, & both the pound-keeper & the municipality which employed him were liable in conversion for the value of the horse at the time of sale.—BROWN v. RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER & RIPLAND (Man.), [1925] 1 W. W. R. 42. CAN.

sn. *Payment of residue to owner—Domestic Animals Act*, 1921 (c. 50)—*Municipal District Act*, 1911 (c. 3).)—The effect of the amendment made by ss. 27, 28 of the former Act extends the period of twelve months provided by s. 213 of the latter Act, for application for payment to the owner of the residue of the proceeds of sale of an impounded animal, to twenty-four months from the date of sale.—DOLLAN v. STERLING, [1924] 3 W. W. R. 209.—CAN.

PART VII. SECT. 9.

sp. *Conviction — Under Stray Animals Act*, 1920 (c. 124).)—Where the evidence showed that accused had been wrongfully convicted of an offence of unlawfully rescuing cattle under a provincial Act, in that he had merely made an attempt:—*Held:* (1) the offence, not being an indictable offence, could not be remitted to the magistrate to convict of an attempt under Criminal Code, s. 949; (2) s. 49 (d) of the above Act did not apply to the portion of the province within which the offence was charged to have been committed.—R. v. QUINEY (1922), 69 D. L. R. 191; 38 Can. Crim. Cas. 139; [1922] 3 W. W. R. 549.—CAN.

PART VII. SECT. 12.

§ l. ——— ——— *Measure of damages.*)—Damages were fixed on the basis of prices obtained at auction sales, for while it may be that prices paid at auction sales are not as large as are usually obtained at private sales, still the prices obtained at auction sales very often have a great deal to do with fixing the price of an animal in the community.—SINWICK v. ELLIOS, [1924] 2 W. W. R. 755. CAN.

§ ll. ——— ——— *Allowance for poundkeeper's fees & expenses.*)—In an action for damages for the conversion of animals illegally sold at a pound-sale, defts. have no right to an allowance for the pound-keeper's fees or expenses.—LEACH v. MANITOBA RURAL MUNICIPALITY No. 262 & MOIR, [1921] 1 W. W. R. 132; 56 D. L. R. 735; 14 Sask. L. R. 25. CAN.

kl. ——— ———.) Plff. impounded with a poundkeeper cattle which had come on to his land through a wire fence & claimed damages. The poundkeeper, without obtaining payment of the damages or security therefor, released the cattle to the owner on receipt of the latter's cheque, payment of which was stopped. On appeal by the owner the council of the municipality decided that the fence was not a lawful fence & that plff. was not entitled to damages. Plff. sued the poundkeeper & the municipality for the damages. *Held:* plff. was entitled as against both defts. to the damages claimed.—JOHNSON v. MUNICIPAL DISTRICT OF BEAVER DAM, [1926] 4 D. L. R. 299; [1925] 3 W. W. R. 369. CAN.

EASEMENTS AND PROFITS À PRENDRE.

Part I.—Nature and Characteristics of Easements.

4. *Add. Annotation :— As to* (1) **Refd.** Sack *v.* Jones, [1925] Ch. 235.

27. *Add. Annotation :—* **Refd.** Simpson *v.* Weber (1925), 133 L. T. 46.

48. *Add. Annotations :*—**Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160; Hackney B. C. *v.* Metropolitan Asylums Board (1924), 131 L. T. 136.

Part III.—Creation of Easements.

89. *Add. Annotation :* **Refd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co. [1926] A. C. 108.

97. *Add. Annotations :—* **Expld. & Distd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Consd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557. **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

98. *Add. Annotations :—* **Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

112. *Add. Annotation :—Generally,* **Mentd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

124. *Annotations :—* For "**Mentd.** Poulton *v.* Moore (1913), 83 L. J. K. B. 875," read "**Consd.** Poulton *v.* Moore (1913), 83 L. J. K. B. 875."

147a. According to intention of parties — Common approach—Not effective until approach cleared.]—SWAN *v.* SINCLAIR, No. 515, *post.*

183. *Add. Annotation :* **Consd.** Gregg *v.* Richards (1926), 95 L. J. Ch. 209.

186a. [illegible].] In the conveyance to pltf. of a house & land there was an express grant to her of a way described as coloured green on the plan indorsed on the deed. The part coloured green was four feet wide & formed part of a wider roadway running along the back of the adjoining houses to the back premises of pltf.'s house. At the time of the conveyance a right of access for vehicles to pltf.'s back premises over the whole roadway was enjoyed with the house conveyed. The habendum in the conveyance was "to hold same with the benefit of all such easements & privileges in the nature of easements as are now subsisting in respect of the property hereby conveyed." Pltf. claimed that the right to use the whole width of the roadway for the purpose of access of vehicles to her back premises passed to her under her conveyance :—*Held :* that the right claimed passed to pltf. by virtue of sect. 6 (2) of the above Act, there being no unequivocal "contrary intention" expressed in the deed within sect. 6 (1), sufficient to negative the passing of such right.—GREGG *v.* RICHARDS, [1926] Ch. 521 : 95 L. J. Ch. 209 ; 135 L. T. 75 ; 70 Sol. Jo. 443, C. A.

190. *Add. Annotation :—As to* (1) **Refd.** Gregg *v.* Richards (1926), 95 L. J. Ch. 209.

204a. —— Intention of parties—No evidence of intention to determine status quo.]—Two adjoining houses, originally belonging to one person, subsequently became vested in pltf. & deft. respectively. For some years before the severance of ownership, a creeper had been growing in what was now deft.'s garden with its foliage spreading along the wall of pltf.'s house. Also, again before the severance of ownership, the post of a gate leading from what was now deft.'s garden had been fastened by plugs & nails into pltf.'s wall. The growth of the creeper had from time to time reached pltf.'s gutter, & he had been obliged to cut it back. Pltf. brought an action for trespass in respect of the two above-mentioned acts, & the county ct. judge found both acts to be trespasses :—*Held :* both the growth of the creeper on pltf.'s wall & the fastening of the gate to pltf.'s wall would amount to trespasses, unless they could be justified by the existence of an easement ; the implied reservation of an easement in a grant of property depends on the common intention of the parties ; here there was no evidence that it was not the

PART III. SECT. 1, SUB-SECT. 1.

91. *Public right.*]—Though the public cannot acquire ownership of a land, it can acquire over it an easement by grant.—USMAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—IND.

PART III. SECT. 1, SUB-SECT. 2.—A.

98 i. *Must not be ultra vires.*]—A corpn. having agreed to grant an easement to lay pipes over certain land :—*Held :* the granting of such easement being quite consistent with the purposes for which the corpn. was authorised to hold land, it was competent for the corpn. to make such grant.—HAWKE PENINSULA ELECTRIC POWER BOARD *v.* AKAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—N.Z.

98 ii. —— *Quebec Public Utility Commission.*]—*Held :* the above commission had no power to create a servitude, or any other right, in property of a "public utility."—MONTREAL TRAMWAYS CO. *v.* MONTREAL-NORD VILLE, [1924] A. C. 994.—CAN.

PART III. SECT. 1, SUB-SECT. 6.—A.

a. For "a" substitute "147a i."

e. For "e" substitute "147a ii."

p. For "p" substitute "147a iii."

PART III. SECT. 2, SUB-SECT. 1.—C.

g i. —— —— —— *Land bounded by private road.*]—Pltf., a lessee, claimed to be entitled to a right of way over a private road existent at the time of the lease & maintained by the lessor, owner of adjoining lands, as one of the approaches from the highway to his own house, & permitted to be used by tenants in prior years without objection. The leased property as described in the lease did not embrace this road, but the lessee claimed that he & prior occupiers of the leased house had the use of it, &, as one of the named boundaries was the roadway, the lease impliedly gave him a right of way over it :—*Held :* the lessee was not entitled to the right-of-way.—BRADY *v.* MCLENNAN (No. 2), [1924] 3 W. W. R. 924 ; 33 B. C. R. 160.—CAN.

intention of the parties to the conveyance that creeper & gate-post should remain, & therefore an easement in each case was impliedly reserved; there was, however, a duty on the part of the grantee to use care that the grantor's property was not unduly interfered with; deft. in allowing the creeper to obstruct pltf.'s gutter had failed to use necessary care, & as to this part of the case the award as to damages must stand.—SIMPSON *v.* WEBER (1925), 133 L. T. 46; 41 T. L. R. 302, D. C.

223. *Add. Annotation:*—**Reld.** Sack *v.* Jones, [1923] Ch. 235.

229. *Add. Annotations:*—**Apld.** Sack *v.* Jones, [1925] Ch. 235. **Reld.** Simpson *v.* Weber (1925), 133 L. T. 46.

253. *Add. Annotation:*—*As to* (1) **Reld.** Simpson *v.* Weber (1925), 133 L. T. 46.

282. *Add. Annotation:*—*As to* (2) **Apprvd.** Gregg *v.* Richards, [1926] Ch. 521.

291. *Add. Annotation:*—*As to* (1) **Reld.** Simpson *v.* Weber (1925), 133 L. T. 46.

299. *Add. Annotations:*—**Consd.** Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841. **Reld.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254; Layzell *v.* Thompson (1920), 43 T. L. R. 58.

320. *Add. Annotation:* **Reld.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

322. *Add. Annotation:* *Generally.* **Mentd.** Verge *v.* Somerville, [1924] A. C. 496.

347. *Add. Annotation:*—**Mentd.** Moser *v.* Ambleside U. D. C. (1924), 89 J. P. 118.

359. *Add. Annotation:* **Reld.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

389. *Add. Annotation:*—*As to* (3) **Reld.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46.

435. *Add. Annotation:* *As to* (1) **Reld.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

Part V.—Preservation and Repair of Easements.

482. *Add. Annotation:*—**Reld.** Sack *v.* Jones, [1925] Ch. 235.

483. *Add. Annotation:* **Reld.** Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

Part VI.—Extinguishment of Easements.

493. *Add. Annotations:*—*As to* (1) **Apld.** Swan *v.* Sinclair, [1921] 1 Ch. 254. **Reld.** Swan *v.* Sinclair, [1925] A. C. 227.

494. *Add. Annotation:*—*As to* (2) **Reld.** Swan *v.* Sinclair, [1925] A. C. 227.

502. *Add. Annotation:* **Reld.** Swan *v.* Sinclair, [1925] A. C. 227.

505. *Add. Annotation:* **Reld.** Swan *v.* Sinclair, [1925] A. C. 227.

PART III. SECT. 3, SUB-SECT. 2.

sw. *The public.*]—To a suit by a private person against the Govt. for a declaration of his ownership of a land, the acquisition of an easement over it by the public is no defence. Though the public cannot acquire ownership of a land, it can acquire over it an easement by prescription.—USMAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

oi. —— *In land of lessor.*]—Although a tenant cannot acquire a prescriptive right of easement in land belonging to his lessor, he may claim a right of easement based on immemorial user.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

o ii. —— *Irrigation from lessor's tank.*]—In India a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART III. SECT. 3, SUB-SECT. 3.

s i. ——.]—In India a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

ss. *Not right to use railway.*]—MEAGHER *v.* CANADIAN PACIFIC RY. Co. (1912), 12 N. B. R. 16.—**CAN.**

PART III. SECT. 3, SUB-SECT. 5. A.

345 i. *Origin of doctrine.*]—When enjoyment of a right of easement has continued uninterrupted for a long series of years, such enjoyment should be attributed to a legal origin, & the ct. should presume a grant or an agreement.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356. **IND.**

PART III. SECT. 3, SUB-SECT. 5. E.

ss. *Proof of commencement of tenancy — User immemorial.*]—Where the origin of a tenancy is known, but the origin of a right of easement has not been traced, the tenancy does not rebut the presumption of a grant which arises upon proof of immemorial user.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART III. SECT. 3, SUB-SECT. 6.—C. (b) ii.

413 i. *Evidence that user not of right — Parol licence granted during statutory period.*]—Parol licence is of no moment unless it is applied for & granted within the period of forty years prescribed by Limitations Act, R. S. O., 1914, s. 35, in which case it will negative the enjoyment of the easement as of right for forty years.—BOWES *v.* REID, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—**CAN.**

PART III. SECT. 3, SUB-SECT. 6.—C. (c) i.

sb. *Forty years — Whether concurrent.*] Limitations Act, R. S. O., 1914, s. 35, makes a right which has been enjoyed for the full period of forty years indefeasible, unless it appears that it was enjoyed by virtue of some consent or agreement expressly given by deed or writing.—BOWES *v.* REID, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—**CAN.**

433 i. *Against whom time computed [Reversioner].* KIELSTRA *v.* WHYSALL (1902), 35 N. S. R. 295. **CAN.**

PART III. SECT. 5, SUB-SECT. 2.

ad. *Plea of user — Road within well-defined limits — Slight variation of via trita — Sufficient.*] BOWES *v.* REID, [1924] 2 D. L. R. 399; 54 O. L. R. 253. **CAN.**

PART IV. SECT. 1.

af. *Whether assignable.*]—In July, 1914, deft. & another granted to S. a right to lay down a tramway through deft.'s land for the purpose of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf., who continued to use the tramway. The assignment was known to deft., who raised no objection. Deft., in Aug. 1922, placed obstructions across the tramway. On a motion for an injunction, deft. contended that the contract granting the tramline was not assignable:—*Held:* the grant was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—MACDONALD *v.* FRIMAN, [1923] N. Z. L. R. 957.—**N.Z.**

511. *Add. Annotation :—As to* (1) **Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

515. For the paragraph in the original volume substitute the following paragraph :—

—— **Acquiescence in obstruction of way.]**— In 1870 a row of houses was put up for sale by auction in eleven lots. One of the conditions was that a strip of land fifteen feet in width, running the entire length of the lots & being the rear portions of the back gardens of the houses, was intended to form a right of way from the back garden of each house into Church Road, which bounded the side of lot 1 on the south, & that the lots would be sold subject to & with the benefit of such right of way, & that the respective purchasers should at the earliest possible moment remove the fifteen feet of end garden wall & form the right of way. This condition was recited in each of the conveyances. Lot 1 was conveyed subject to the right of way of the owners of the other lots & lots 2 & 3 with the benefit of & subject to the right of way. The purchaser of lot 1 let it for a term of fifty years, which expired on June 15, 1922, subject to the right of way. In 1904 pltf. took an assignment of this lease, & in 1911 he purchased the fee simple of lots 2 & 3, with the benefit & subject to the right of way. Deft. was the present owner of lot 1. For fifty years from the date of the original sale no attempt was made to form the proposed roadway, the garden walls dividing the several lots remained intact, & the wall separating lot 1 from Church Road was not breached. Church Road was six feet above the level of the back gardens. In 1883 the original lessee of lot 1 in the course of erecting some stables in his back garden raised the surface of the strip of land at the end of his lot to the level of Church Road, with the result that there was a drop of six feet from that strip into lot 2. In 1910 pltf., in anticipation of the expiration of his lease, proposed to build a garage on lots 2 & 3. With that object in view he pulled down part of the wall which separated the rear portion of lot 1 from Church Road & erected gates there, & he also raised the level of the rear portion of lot 2; & subsequently he caused a car to be driven through the gates over the strip in lot 1 into lot 2. On the expiration of the lease deft. blocked up the gates & obstructed the way. In an action by pltf. as owner of lots 2 & 3 to enforce his right of way against the deft. :—*Held :* (1) until the land was cleared there could be no effectual creation of a right of way; (2) having regard to the time which had elapsed before any purchaser attempted to assert his rights under the original conveyance, the inevitable inference was that the arrangement made in 1870 had been abandoned by common consent.—SWAN *v.* SINCLAIR, [1925] A. C. 227; 94 L. J. Ch. 104; 132 L. T. 577; 89 J. P. 38; 41 T. L. R. 158; 22 L. G. R. 705, H. L.

Part VII.—Rights of Way.

581. In the cross-references following this case for "**Church ways.**]—*See* HIGHWAYS," substitute "**Church ways.**] *See* ECCLESIASTICAL LAW, p. 307, *post*."

598. *Add. Annotation :*—**Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

641. *Add. Annotation :*—**Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

PART VI. SECT. 2, SUB-SECT. 2.—B.

507 i. *Non-user alone as presumption of abandonment—Abandonment question of fact.*]—While mere non-user is not sufficient to amount to abandonment of a right of way, it is a fact to be taken into consideration, as it is from all such facts that the ct. has to decide whether or not a clear intention to abandon can be inferred or is indicated. Where pltf. & his predecessors in title had failed to exercise a right of way had fenced off their land, so as to shut off the right of way & had omitted any specific mention of the right in various conveyances:—*Held:* an abandonment was established.—CHRISTOPHER *v.* COHEN (1924), I. L. R. 2 Ran. 534.—IND.

PART VI. SECT. 3, SUB-SECT. 1.

i i. ——.]—The unity of the dominant & servient estates in the same person extinguishes the easement appurtenant to the dominant estate.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—IND.

i ii. —— *Easement of support.*]—HACKETT *v.* SMITH (1880), 5 A. R. 341.—CAN.

540 i. *Unity of possession without unity of title—Suspension of easement—Effect.*]—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—IND.

a i. —— ——.]—An easement may be revived after it has been extinguished, by the union of the dominant & servient tenements in one owner, by their subsequent severance, provided the easement is apparent, continuous & essential to the enjoyment of the dominant tenement.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—IND.

PART VI. SECT. 4.

ak. *Sale of servient tenement for taxes under statutory power.*]—Under Calgary Charter a sale for taxes of the servient tenement does not extinguish a true easement.—HUTCHINGS *v.* CAMPBELL, WILSON & HORNE, LTD., [1924] 2 D. L. R. 209; 1 W. W. R. 1070; 20 Alta. L. R. 275.—CAN.

PART VII. SECT. 1.

586 ii. —— *Agreement between co-owners.*]—Deft. & R., each of whom owned one-half of a lot of land, entered into an agreement for a right of way to a building in the rear, each contributing from his half one foot nine inches, so as to make a right of way, three feet six inches in width :—*Held :* the deed providing for the establishment of the way must be construed as a mutual conveyance from each party to the other of an interest in the land necessary to be used in common for the alleged right of way, & not as an agreement to establish a right of way by grant or otherwise.—TRAVIS INVESTMENT CO. *v.* POWER, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—CAN.

r. For "BADHANATH" read "RADHANATH."

PART VII. SECT. 2, SUB-SECT. 5.

602 i. *Extent of user of way—Grant subject to existing obstruction.*]—When a right of way is granted over land on which there exists an obstruction at the date of the grant, it is a question of interpretation of the grant whether the easement is subject to the obstruction or free from it.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—N.Z.

PART VII. SECT. 6, SUB-SECT. 3.—B. (a).

633 v. ——.]—TRAVIS INVESTMENT CO. *v.* POWER, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—CAN.

si. —— ——.]—Where there was a grant of way to & from claimant's warehouse solely for the purpose of taking goods to & from the warehouse, & at the time of the grant claimant had no building which could be described as a warehouse, but was then contemplating the building of one :—*Held :* when the grant was made the parties must have intended to create a right of way in connection with the warehouse to be erected in the future, & the grant ought to be so considered.—PATERSON & BARR, LTD. *v.* OTAGO UNIVERSITY, [1925] N. Z. L. R. 191.—N.Z.

684. *Add. Annotation :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

687. *Add. Citations :*—[1924] 1 Ch. 211; 130 L. T. 273; 88 J. P. 37.
Add. Annotations :—*As to* (2) **Reld.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. *Generally*, **Mentd.** Kelly *v.* Barrett, [1924] 2 Ch. 379.

721a. Includes motor cars.]—A.-G. *v.* HODGSON, [1922] 2 Ch. 429; 91 L. J. Ch. 426; 127 L. T. 329; 87 J. P. 121; 38 T. L. R. 601; 66 Sol. Jo. 538; 20 L. G. R. 425.

738. *Add. Annotation :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

743. *Add. Annotation :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

754. *Add. Annotation :*—**Reld.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

Part VIII.—Light.

830. *Add. Annotation :*—*As to* (6) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46.

858. *Add. Annotations :*—**Consd.** Foster *v.* Lyons (1926), 70 Sol. Jo. 1182. **Mentd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

896. *Add. Annotation :*—*As to* (1) **Reld.** Rye *v.* Purcell, [1926] 1 K. B. 446.

898. *Add. Annotation :*—*As to* (1) **Folld.** Foster *v.* Lyons (1926), 70 Sol. Jo. 1182.

898a. —— —— ——.]—A reservation in a lease empowering the lessor to build on adjoining land, notwithstanding such building might obstruct any lights on the demised land, prevents the lessee from acquiring a right to light under Prescription Act, 1832 (c. 71), s. 3.—FOSTER *v.* LYONS & CO., LTD. (1926), 70 Sol. Jo. 1182.

934a. ——.]—The standard as to the amount of light required to be left so as to prevent a nuisance is an absolute one, & if an obstruction to an ancient light renders a room inadequately lighted & causes an actionable nuisance, the obstruction does not cease to be actionable because the room is situated in a manufacturing town. HORTON'S ESTATE, LTD. *v.* BEATTIE, LTD. (1926), 42 T. L. R. 701; 70 Sol. Jo. 917.

956. *Add. Annotation :*—**Consd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475.

982. *Add. Annotation :*—*As to* (1) **Reld.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475.

Part IX.—Water.

1016. *Add. Annotation :*—**Apld.** Attwood *v.* Llay Main Collieries (1925), 70 Sol. Jo. 265.

1117. *Add. Annotations :*—**Consd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671. **Reld.** Noble *v.* Harrison, [1926] 2 K. B. 332.

PART VII. SECT. 6, SUB-SECT. 3.—B. (b).

690 l. *Limited by user proved—Only when terminus ad quem of special nature.*]—The only cases in which servitudes of way acquired by prescription are limited by reference to the purposes of the traffic carried by them are those cases in which there is some special feature attached to the terminus to which the roadway leads, as in a way to a mill, kirk, or peat moss.—CARSTAIRS *v.* SPENCE, [1924] S. C. 380.—**SCOT.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (f).

719 l. *Whether way for general purposes.*]—Where proprietors of certain lands sought to interdict the proprietor of adjoining lands from carting building materials for dwelling-houses over a roadway or track which traversed their lands:—*Held:* during a period defenders had acquired a servitude right of access for cart traffic: & the fact that the carting had been for agricultural purposes did not limit the servitude to a right of passage for such purposes, but a right of access by cart for all purposes, including the carting of building materials, had been acquired.—CARSTAIRS *v.* Spence, [1924] S. C. 380.—**SCOT.**

PART VII. SECT. 6, SUB-SECT. 3.—D. (a).

754l. .... *Method of Whether reasonable.*]—Deft. leased to pltf. an island, standing in a shallow lake, which in the dry season became a muddy marsh. The land surrounding the island belonged to deft., & the lease provided that pltf. should have a right of way across it, nothing being said as to the mode of exercising the right. Pltf. having built a trestle bridge from the island to the main land:—*Held:* pltf.'s mode of user was reasonable, & deft. was not justified in interfering with the bridge.—BUTCHART *v.* DOYLE (1907), 24 A. R. 615. **CAN.**

al. *Removal of existing obstruction—Way granted free of obstruction.*]—Where a right of way is granted over land on which there exists an obstruction at the date of the grant, but free from it, it is for the grantee to get rid of the obstruction by his own act. The grantor is not under any obligation in the absence of a contract to that effect.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—**N.Z.**

PART VII. SECT. 6, SUB-SECT. 3.—D. (b).

759 l. *General rule.*]—Apart from special custom or express contract, the owner of a servient tenement is not bound to execute any repairs necessary to ensure the enjoyment of the easement by the owner of the dominant tenement.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801. **N.Z.**

PART VII. SECT. 8.

p l. ....]—Deft having, by grant, a right of way over a strip of land, the property of pltf.:—*Held:* pltf. was entitled to erect a fence upon the boundary between the strip & deft.'s land, allowing deft. reasonable access by a gate or gates to the way.—LEWIS *v.* WARKLAND (1923), 54 O. L. R. 647. **CAN.**

PART IX. SECT. 3.

am. *Irregation from tank—Prescription by lease.*]—In India, a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—TIRUVENGA, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART IX. SECT. 4.

an. *Unity of seisin for different estates—Enjoyment of irrigation rights continued by tenant.*]—Where the tenancy in execution of a rent decree was sold & purchased by the landlord, but the tenant continued in occupation in the undisturbed enjoyment of the right of irrigation & the rent was substantially enhanced:—*Held:* in such circumstances the right of irrigation was not extinguished, but momentarily suspended & revived.—TIRUVENGA, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

Part X.—Support.

1165. *Add. Annotation:* —**Mentd.** Martins *v.* Fowler, [1926] A. C. 746.

1193. *Add. Annotation:* —**Consd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671.

1223. *Add. Annotation:* —**Apld.** Sack *v.* Jones, [1925] Ch. 235.

1226a. Whether party-wall entitled to support—From adjacent building.]—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. Pltf. alleged that owing to lack of repair & underpinning deft.'s house was subsiding, dragging the party-wall over, & thereby damaging pltf.'s house:—*Held:* pltf.'s allegations had not been substantiated by the evidence. *Semble:* even if they had been substantiated pltf. would have had no cause of action.—SACK *v.* JONES, [1925] Ch. 235; 94 L. J. Ch. 229; 133 L. T. 129.

Part XI.—Miscellaneous Easements.

1282. *Add. Annotations:* —**Refd.** Back *v.* Daniels (1921), 69 Sol. Jo. 160; Hackney B. C. *v.* Metropolitan Asylums Board (1921), 131 L. T. 136.

1322a. To attach creeper to wall.]—SIMPSON *v.* WEBER, No. 204a, *ante.*

1322b. To attach post to wall.]—SIMPSON *v.* WEBER, No. 204a, *ante.*

Part XII.—Disturbance of Easements.

1352. *Add. Annotation:* As *to* (2) **Consd.** Freeborn *v.* Leeming, [1926] 1 K. B. 160.

1356. *Add. Annotations:* As *to* (2) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475; Horton's Estate *v.* Beattie (1926), 42 T. L. R. 701.

1396. *Add. Annotation:* **Refd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475.

1399. For the paragraph in the original volume substitute the following paragraph:—

.] Chancery Amendment Act, 1858 (c. 27), s. 2, confers on the Ct. of Ch. jurisdiction to award damages in lieu of an injunction in the case of a threatened injury. Notwithstanding the repeal of that Act by Statute Law Revision & Civil Procedure Act, 1883 (c. 49), the combined effect of Jud. Act, 1873 (c. 66), s. 16, & Statute Law Revision Act, 1898 (c. 22), s. 1, is to maintain in force the jurisdiction conferred by Chancery Amendment Act, 1858, s. 2.

Where therefore an action was brought in the Ch. Div. for an injunction to restrain an obstruction of ancient lights, & the ct. found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place: *Held:* the ct. had jurisdiction to award damages in lieu of an injunction. LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD. *v.* SLACK, [1924] A. C. 851; 93 L. J. Ch. 436; 131 L. T. 710; 40 T. L. R. 745; 68 Sol. Jo. 715, H. L.; *revsg.* S. C. *sub nom.* SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., [1923] 1 Ch. 431, C. A.; *subsequent proceedings*, [1924] 2 Ch. 475, C. A.

1399a. ——.}—In an action brought by pltf. against deft. society for an injunction & damages in respect of an alleged obstruction of ancient lights, the judge found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place, & he expressed the opinion that the interference with pltf.'s legal rights when the building was completed would be small, & could be adequately compensated by damages, but held, contrary to his own opinion, that he was bound by the opinion of the Ct. of Appeal in *Dreyfus* v. *Peruvian Guano Co.* (1889), 43 Ch. D. 316, that there was no jurisdiction under Chancery Amendment Act, 1858 (c. 27), to give damages in lieu of an injunction where the injury was threatened but had not been sustained, & he therefore granted an injunction. The Ct. of Appeal, without going into the merits, by a majority, upheld the view that the ct. had no jurisdiction in such a case to award damages in

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PART X. SECT. 1, SUB-SECT. 1.—A. (b).

1143 i. *General rule—Support in natural state.*] A person must not excavate on his land so as to destroy the lateral support sufficient to maintain the soil on his neighbour's adjoining land in its natural state.—METROPOLITAN LIFE ASSURANCE CO. *v.* McQUEEN, [1924] 2 D. L. R. 942, 2 W. W. R. 981. CAN.

PART X. SECT. 1, SUB-SECT. 1.—B. (b).

1169 i. *Right of building contributing to subsidence.*] Where a person by an excavation on his land causes subsidence on his neighbour's land, because of the added weight of a building thereon, he is not liable. The neighbour is not entitled to sufficient support to maintain his building.—METROPOLITAN LIFE ASSURANCE CO. *v.* McQUEEN, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—CAN.

PART XII. SECT. 2, SUB-SECT. 2.—B. (a).

ai. *Mortgagee—Though not in possession.*] A mtgee. of land, though not in possession, has a right to have his security left unimpaired, & if the owner of adjoining land excavates on the mortgaged land, although the mtgee. may not be entitled to maintain an action for trespass, he has a right of action for injunction or damages, independent of any that the owner of the mortgaged land might have.—METROPOLITAN LIFE ASSURANCE CO. *v.* McQUEEN, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—CAN.

lieu of an injunction. The House of Lords, by a majority, reversed this decision, & remitted the case to the Ct. of Appeal to deal with it on its merits:—*Held:* the findings of the judge brought the case within the "good working rule" suggested by A. L. SMITH, L.J., in *Shelfer* v. *City of London Electric Lighting Co.*, No. 1356, *ante*, as that which might guide the ct. in exercising the discretion given it by Chancery Amendment Act, 1858, to award damages in lieu of an injunction; that was still the rule to be adopted by the ct. as a guide & was not affected by anything that was decided in *Colls* v. *Home & Colonial Stores*, No. 830, *ante*; therefore, there being evidence to support the findings of the judge, the injunction granted by him, contrary to his own opinion, ought to be discharged, & in lieu thereof an inquiry directed as to damages. —SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., [1924] 2 Ch. 475; 94 L. J. Ch. 46, C. A.

1406a. —— Erection of building interfered with acquiesced in by defendant.]—Where pltf. & deft. held adjoining pieces of ground under a common landlord, & pltf., with the licence of the landlord, & without objection by deft., had erected a manufactory, an injunction was granted to restrain deft. so building as to obstruct the lights of pltf.'s manufactory pending trial.—CROOK *v.* WILSON (1855), 3 W. R. 378.

1408. *Add. Annotation:—As to* (1) **Consd.** Slack v. Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46.

1444a. ——.]—SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., No. 1390a, *ante*.

1471. *Add. Annotation:* **Folld.** Hoa v. Beattie (1926), 42 T. L. R. 701.

Part XIII.—Profits à Prendre.

1503. *Add. Annotation:—Generally.* **Reld.** Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. K. B. 312.

1570. *Add. Annotation:* **Reld.** The Fagernes, [1926] P. 185.

1589. *Add. Annotation:* **Reld.** ries, [1925] 2 K. B. 1

PART XII. SECT. 2, SUB-SECT. 2.—D. (b) i.

1451 iii. —— ——.]—Under Specific Relief Act, 1877, the question of an injunction to restrain a party from erecting a building so as to interfere with his neighbour's easements of light & air presents itself in a different light to what it does in the English cts.; the ct. has a discretion, & may an injunction where the injury is that pecuniary compensation would not afford adequate relief.—MAHOMED AUZAM ISMAIL *v.* JAGANATH JAMNADAS (1925), I. L. R. 3 Ran. 230.—**IND.**

PART XIII. SECT. 4, SUB-SECT. 1.—A.

sw. *Who may acquire—Public.*]—Though the public cannot acquire ownership of a land, it can acquire *profits à prendre* over it by grant.—USMAN SAIT *v.*

FOR INDIA (1923), I. L. R. 47 116. **IND.**

PART XIII. SECT. 4, SUB-SECT. 2.

1536 I. *The public.*] Though a land, it can acquire *profits à* over it by prescription.—USMAN SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

Part III.—Constitution of the Church of England

Add. Annotation :—Generally, **Reld.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

135. *Annotations :*—For "*Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1923] 2 Ch. 504," read "*Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53."

Add. Annotation :—Generally, **Mentd.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

185. *Add. Annotation :—As to* (2) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

199. *Add. Annotation :—As to* (3) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

276. *Add. Annotation :—As to* (2) **Reld.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

292. ***Add. Citations :—sub nom.*** **AYER** *v.* [illegible], Dyer 221b; Ben. 129; *sub nom.* ANON., Dal. 53; 1 And. 9.
*Annotations :—***Reld.** Cromwel's Case (1601), 2 Co. Rep. 69b; Lyn *v.* Wyn (1665), O. Bridg. 122.

306. ***Add. Annotation :*** — **Mentd.** Beaumont *v.* Jeffery (1924), 40 T. L. R. 796.

472a. —— **Liability of lay-impropriation to sequestration.**]—WALWYN *v.* AWBERRY, No. 2599a,

569. *Add. Annotation :—As to* (3) **Reld.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1063. *Add. Annotation :—As to* (1) **Reld.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

Part IV.—Ecclesiastical Courts.

1115. *Add. Annotation :—As to* (1) **Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1145. *Add. Annotation :—As to* (8) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1171. *Add. Annotation :* — **Mentd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1280a. — **Alternative remedy.**]—Prohibition will issue in respect of an order of an ecclesiastical ct. made without jurisdiction, notwithstanding an appeal lie from such order to a higher ecclesiastical ct. & thence to the Privy Council. R. *v.* NORTH, *Ex p.* OAKEY (1926), 43 T. L. R. 60; 70 Sol. Jo. 1181, C. A.

1349. *Add. Annotation :* — **Reld.** R. *v.* North, *Ex p.* [illegible]y (1926), 43 T. L. R. 60.

1413. *Add. Annotation :*—**Mentd.** Lankester *v.* Lankester & Cooper, [1925] P. 114.

1504. *Add. Annotation :—Generally*, **Mentd.** Tate & Lyle *v.* L. & N. E. Ry. & L. M. & S. Ry. (1926), 43 T. L. R. 49.

1549. *Add. Annotation :*— **Mentd.** Tate & Lyle *v.* L. & N. E. Ry. & L. M. & S. Ry. (1926), 43 T. L. R. 49.

1755. *Add. Annotation :*—**Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1756. *Add. Annotation :*—**Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1792. *Add. Annotation :* — **Mentd.** Bermondsey B. C. *v.* Mortimer, [1926] P. 87.

Part V.—Clergy.

1821. For "**Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay member**" read "**Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay reader.**"

2443a. **Grounds for approval or disapproval of scheme.**]—Although it may seem desirable on grounds of economy & administration to unite two country benefices with small populations, yet a scheme for such union will not be affirmed on special reference by the Judicial Committee of the Privy Council if there is united opposition to it on the part of the inhabitants.—*Re* (MESSAGE ALL.)

[illegible] Jo. 493, P. C.

2539. *Add. Annotation :*—**Reld.** [illegible] *v.* Waring & Gillow, [1926] A. C. 670.

2595. *Add. Annotation :—As to* (2) **Consd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2599a. —— **Failure to repair chancel.**]—(1) A justification in trespass, that pltf. was the rector of such a church, & that the goods were taken under a sequestration of the profits of the rectory, for the reparation of the chancel, must aver that no more was taken than was necessary to the expense of reparation. (2) But the profits of a lay-impropriation cannot be sequestered for the repair of the chancel.—WALWYN *v.* AWBERRY (1677), 1 Mod. Rep. 258; 2 Mod. Rep. 254; Freem. K. B. 230; 86 E. R. 866; *sub nom.* ANON., 2 Vent. 35; 3 Keb. 829.

Annotation :—Generally, **Mentd.** Harding *v.* Hall (1842), 10 M. & W. 42.

[illegible]. *Add. Annotation :—As to* (1) **Consd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R.

IV. SECT. 6, SUB-SECT. 2.

1217 l. Church of [illegible] Act. [1925] 4 D. L. R. 994. CAN.

Part VI.—Public Worship and Church Ministrations.

2762. *Add. Annotation :—As to* (1) **Reld.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

2764a. —— —— ——.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *post.*

2786. *Add. Annotation :—As to* (1) **Reld.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

2797. *Add. Annotation :—As to* (3) **Reld.** St. Margaret's, Toxteth Park (1924), 40 T. L. R. 687.

2825. For the paragraph in the original volume substitute the following paragraph :—

—— **As of course.**]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *post.*

2831. For the paragraph in the original volume substitute the following paragraph :—

—— —— **Approval of decorations & fittings.**]—On the hearing in the Consistory Ct. of London of a petition as to the furniture & fittings of the Church of St. Magnus-the-Martyr, in the City of London, a faculty was granted for, amongst other things : (1) a second Holy Table ; (2) an image of the Virgin & Holy Child placed behind the second Holy Table ; & (3) a crucifix fixed to a pillar at a considerable height from the floor & near the pulpit. On appeal the Ct. of Arches dismissed the appeal as to (1) & (3), but allowed it as to (2) :—*Held :* (1) the law was the same for every kind of sacred image in a church, including a crucifix or rood, & although such an image was not illegal *per se*, it could not lawfully be placed in a church without a faculty.

On an application for such a faculty, the question to be considered is whether, if the faculty be granted, there is or is not, in the particular case, a danger of the image being used for purposes of worship or adoration condemned by Article of Religion 22. After discussion of the kind of evidence proper to this inquiry :—*Held :* (2) there was a danger of the proposed image of the Virgin & Holy Child being so used ; (3) an image used for purposes of worship or adoration was an ornament & was illegal, because not included amongst the ornaments of the church sanctioned by the Ornaments Rubric in the Book of Common Prayer ; (4) a faculty authorising the erection of an image in a church should not be absolute, but until further order.

(5) The other matter of appeal is second Holy Table. The church holds, or will hold, between three hundred & four hundred people, & there are a large number of celebrations every week. In those circumstances it would be a matter of course to allow a second Holy Table, but for the ex- character of the ceremonial & of this church. I am not, however, disposed to interfere with the exercise of the learned Chancellor's discretion in this part of the case. I think there ought to be full ns & particulars of the decorations & ttings of & surrounding the second Holy Table, & these fittings ought to be s[illegible] to the approval of the learned Chancellor & to be specifically included in the faculty (SIR LEWIS DIBDIN).—VINCENT *v.* ST. THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), [1925] P. 1 ; *sub nom.* ST. MAGNUS THE MARTYR, LONDON BRIDGE, 41 T. L. R. 3.

2842. *Add. Annotation :*—**Reld.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

2844. *Add. Annotation :*—**Reld.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

2859. *Add. Annotation : —As to* (3) **Dbtd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

2861. *Add. Annotation : As to* (1) **Reld.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

2862. *Add. Annotation :* **Reld.** Vincent v St. Magnus the Martyr, etc., [1925] P. 1.

2871. *Add. Annotation :* **Reld.** Vincent v St. the Martyr, etc., [1925] P. 1.

2872. *Add. Annotation :* **Reld.** Vincent v St. the Martyr, te., [1925] P. 1.

2873. For the in the original ituto the following

Ordinary rules as to images apply.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante.*

2874. *Add. Annotation :* **Reld.** Vincent v. St. Martyr, etc., [1895] P. 1.

2875. *Add. Annotation :* **Reld.** Vincent v. St. the Martyr, etc., [1895] P. 1.

2876. *Add. Annotation :* **Reld.** Vincent Magnus the Martyr, etc., [1925] P. 1

2882. *Add. Annotation :* **Reld.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

2883. *Add. Annotation :* **Reld.** Vincent the Martyr, etc., [1925] P. 1.

2888. *Add. Annotation :* **Reld.** Vincent v. the Martyr, etc., [1925] P. 1.

2889. *Annotation :* **Reld.** Vincent v. St. the Martyr, etc., [1925] P. 1.

2892. *Add. Annotation :* , **Reld.** Vincent . St. Magnus the Martyr, etc., [1925] P. 1.

2893. *Add. Annotation :* **Reld.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

2896. For the paragraph in the original volume substitute the following paragraph :—

—— —— ——.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCH- , No. 2831.

2900. *Add. Annotation :* (2) **Consd.** v. St. Magnus etc., [1925] P. 1.

2906. For the paragraph in the original volume substitute the following paragraph :—

—— —.]—VINCENT *v.* ST. MAGNUS THE MARTYR,

2916. For the paragraph in the original volume

The Virgin Child—Probability of venera-
. MAGNUS THE MARTYR
, No. 2831

Part VII.—Property of the Church of England.

3112. *Add. Annotation :* —**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

3113a. Whether faculty absolute—Erection of image.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

3391a. —— —— Tithable where landed.]—By custom, fish taken in the sea is tithable where landed.—ANON (1632), Cro. Car. 264; 79 E. R. 830.

3416. *Add. Annotation : Generally*, **Mentd.** R. *v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192.

3433. *Add. Annotation :* — *Generally*, **Mentd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

3454a. — — Whether premises exempted from prescribed rate Onus of proof.] By the above Act & a decree made pursuant to it & having the force of a statute, the lessees of houses & all other hereditaments, with certain immaterial exceptions, situated in the City of London, are liable to pay a tithe of 2*s.* 9*d.* for every rent of 20*s.* by the year, "& so above the rent of 20*s.* by the year by the rate aforesaid." The decree contained a proviso that in the case of premises in respect of which less sums had been accustomed to be paid for tithes before 1515, the date of the above Act, the premises should be exempted from the prescribed rate. In an action by the owners of tithes against the occupiers of premises in the City for tithe at the rate prescribed by the Act: *Held:* (1) the *onus* was on defts. to prove that the tithe paid before 1515 in respect of the premises was less than the sum prescribed by the Act; (2) defts. had discharged the *onus*. BUSBY *v.* AVONMORE (1927), *Times*, Mar. 26, C. A.

3468. *Add. Annotation : As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

3488. For "*Held:* the ct. had jurisdiction to deal with the costs, & they would have to be paid by W., the landlord seeking compulsory redemption" read "*Held:* (1) the ct. had jurisdiction to deal with the costs; (2) they must be paid by W., the landowner seeking compulsory redemption."

Add. Annotations : As to (1) **Apprvd.** *Re* Wartling Tithe Redemption, [1924] 2 Ch. 123. *As to* (2) **Overd.** *Re* Wartling Tithe Redemption, [1924] 2 Ch. 123.

3513a. Mode of payment of compensation—At election of limited owner—Whether election revocable.]—*Re* WARTLING TITHE REDEMPTION, No. 3513b, *post*.

3513b. Cost of investment of redemption money—Compulsory redemption—Jurisdiction of court to deal with.]—By a settlement dated in 1893 certain tithe rentcharges payable out of lands situate at W. were settled, subject to certain interests which had determined, to the of H. for life with remainders over. The

the trustees for the

of

viding that a sole trustee should be competent to act for all the purposes of the Acts, including the receipt of capital money. In 1899 H. assigned his life interest in the rentcharges to C. In 1905 C. died, having by his will devised his real & personal estate to resps. & appointed them his exors. In 1922 applt., who was the owner of the land out of which certain of the tithe rentcharges were payable, in exercise of the power given him by Tithe Act, 1918 (c. 54), s. 3, applied to the Ministry of Agriculture & Fisheries for the redemption of certain of these charges, amounting to £48 10*s.* 8*d.* & 5*s.* respectively, & for the determination by the Minister of the amount of the consideration money payable in respect thereof. On Sept. 20, 1922, resps., in exercise of their option under Tithe Act, 1846 (c. 73), s. 9, signed a form of consent which had been sent to them by the Ministry to the payment of the consideration money to the surviving trustee of the settlement of 1893. A month later they wrote to the Ministry revoking their consent & requesting that the money might be paid into ct. The Ministry thereupon wrote to applt. directing him to pay the money into ct., which he accordingly did. On Feb. 12, 1923, resps. took out an originating summons for an order that the fund in ct. might be invested & the income therefrom paid to resps. or the survivor of them as & when received during the life of the tenant for life:— *Held:* (1) on an application to invest money paid into ct. representing compensation paid under the Tithe Acts on the redemption of rentcharges, there was no general principle that required the ct. to direct that the person exercising the compulsory powers under the Acts should bear the burden of the costs, but the costs were, under Jud. Act, 1890 (c. 44), s. 5, in the discretion of the ct. entirely unfettered by any such general principle; the ct. below ought to have exercised its discretion by holding that applt., who had been brought before the ct. solely for the purpose of making him liable for costs, was not so liable, & to have dismissed the application as against him with costs.

(2) *Semble:* there is no power in the Tithe Acts which enables a tithe owner who has once exercised the option given him by the Act of 1846, s. 9, to revoke or alter the exercise of it.—*Re* WARTLING TITHE REDEMPTION, [1924] 2 Ch. 123; 93 L. J. Ch. 502; 131 L. T. 185; 88 J. P. 133; 68 Sol. Jo. 518; 22 L. G. R. 349, C. A.

c original volume, p. 492, No. 3188.

3543. *Add. Citations :*—[1924] 1 K. B. 151; 93 L. J. K. B. 116; 130 L. T. 383; 88 J. P. 33; 68 Sol. Jo. 541.

3621. *Add. Annotation :* — *Generally*, **Mentd.** Everett *v.* Griffiths, [1924] 1 K. B. 641.

3707. *Add. Annotation :*— *Generally*, **Mentd.** Kursell *v.* Timber Op
1 K. B. 298.

3893. *Add. Annotation :*—**Mentd.** Fox v. Fox, [1925] P. 157.

3900. The order of the cross-references following this case should be inverted.

Part VIII.—Religious Bodies other than the Church of England.

3970. *Add. Annotation :*— **Mentd.** Everett v. Griffiths, 1 K.

PART VII. SECT. 16, SUB-SECT. 1.

sa. *Spiritual corporation —Power to borrow.*]—An ecclesiastical corpn., being a non-trading corpn., has no implied power to borrow money, unless such power is expressly or impliedly given by its constitution. Although an Act constituting such a corpn. does not expressly give power to borrow or to erect a church, but does expressly give power to mortgage, the power to borrow for the purpose of erecting a church is implied, since the erection of a church is the principal reason for the incorporation. — LEONARD v. ST. [illegible] SH, [1922] 1 W. W. R. 601; 66 D. L. R. 301; 17 Alta. L. R. 262. **CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

ti. [illegible] The canon law of the Church is foreign law, [illegible] IV 1 I. R. 90. **IR.**

a i. [illegible] *Power to [illegible] priest.*]—Applt., a parish[illegible] removed from his parish by a [illegible] of removal issued by the bishop of the diocese in which the parish was situated. Applt. claimed a declaration that the decree was illegal & void on [illegible] that (1) [illegible] was no [illegible] under the canon law to issue such a decree unless a "citation" had been first served on him, & he had an opportunity to [illegible] the [illegible] against him; (2) alternatively, if the canon law did not require the service of a "citation" or the granting of a [illegible] yet the making [illegible] of the decree without notice to him was contrary to natural justice: *Held* the decree was not illegal on either [illegible] O'CALLAGHAN v. SULLIVAN, 1 I. R. 90 **IR.**

church LEONARD v. PARISH, [1922] 1 W. W. R. 601; 66 D. L. R. 301; 17 Alta. L. R. 262 **CAN.**

sd. *Relation to civil law Archbishop of Edmonton As to parishes in [illegible] sc.*] LEONARD v. ST. [illegible] SH, [1922] 1 W. W. R. 601; 66 D. L. R. 301; 17 Alta. L. R. 262. **CAN.**

EDUCATION.

Part I.—In General.

5. *Add. Annotation :*—**Reld.** B. *v.* B., [1924] P. 170.

Part IV.—Elementary Schools.

30. *Add. Annotation :*—**Consd.** Northern Theatres Co. *v.* Shillito, [1925] 2 K. B. 100.

47. *Add. Annotation :*—**Reld.** Sadder *v.* Sheffield Corpn., Dyson *v.* Sheffield Corpn., [1924] 1 Ch. 483.

Part V.—School Attendance.

78. *Add. Annotation :*—**N.F.** Rednall *v.* Beamish (1926), 135 L. T. 155.

79a. . . . .] Resp., a share-fisherman & the father of a boy of fourteen years of age & of six other children of school age, placed the boy out at work at 5*s.* 6*d.* a week, & applied to the local education authority to exempt the boy from school attendance. Exemption was refused, &, on an information against resp. for failing, without reasonable excuse, to cause the boy, being between five & fifteen years of age, to attend school, as required by the bye-laws of the education authority, the justices held that the fact of the boy's having obtained regular employment of a beneficial nature was a reasonable excuse, & they dismissed the information :—*Held :* the fact of the boy's employment was not a reasonable excuse, & the case must be remitted to the justices.—REDNALL *v.* BEAMISH (1926), 135 L. T. 155 ; 90 J. P. 153 ; 42 T. L. R. 538 ; 24 L. G. R. 391, D. C.

PART II. SECT. 2, SUB-SECT. 4.

171. *Negligence of education authority in defective state of playground.*]—Applts. planted a number of young trees upon a portion of the playground of a school under their control, & erected wooden stakes with sharp & jagged points round each tree. These stakes were pressed into the ground & brought together at the top in the form of a pyramid. The area covered by the trees had become overgrown with grass, & in that area a hole had been dug, & the earth heaped up at the side of it, forming a mound two or three feet in height. Resp.'s daughter, a child of six years, when playing fell on one of the stakes, which pierced her eye : *Held :* applts. had been negligent in not taking steps to obviate the danger, & were liable in damages.—TRANSVAAL PROVINCIAL ADMINISTRATION *v.* COLEY, [1925] App. D. 24.—S. AF.

e 1. ——— *Supervision of rifle-shooting competition.*]—A school board has a duty to see that the school premises are not used in a manner dangerous to the children. If it authorises or permits a shooting competition with rifles in the course of school sports on a holiday granted for such purpose, it must provide efficient supervision, including efficient inspection of the rifles used, & a breach of that duty will subject it to damages for injury to a boy caused through his having a defective rifle.—WALTON *v.* VANCOUVER BOARD OF SCHOOL TRUSTEES, [1924] 2 D. L. R. 387 ; 2 W. W. R. 49 ; 34 B. C. R. 38.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.

201. *Duty to "maintain & keep efficient"—School transferred to local authority.*]—Trustees of a voluntary Episcopal school transferred it to the local education authority, the school then being conducted as a primary school, with a supplementary course. Two years after the transfer, the education authority altered the system & began to conduct it in sequence with a neighbouring school. In an action against the education authority at the instance of the former trustees :—*Held :* under Education (Scotland) Act, 1918, *s.* 18 (3), defenders were bound to hold, maintain, & manage the transferred school as a public school of the same character & status as at the date of the transfer & provide similar instruction to that provided at that date.—NORROR *v.* ABERDEENSHIRE EDUCATION AUTHORITY, [1924] S. C. 590.—SCOT.

26 ii. ——— *Performance of duty disputed—Jurisdiction of court.*]—*Held :* while questions as to due fulfilment or observance by the education authority of their statutory obligations were questions of fact which fell to be determined by the Education Department under Education (Scotland) Act, 1918, *s.* 18 (4), where the question involved the measure of these obligations, that was a question of law, with regard to which the jurisdiction of the ct. had not been excluded.—NORROR *v.* ABERDEENSHIRE EDUCATION AUTHORITY, [1923] S. C. 881.—SCOT.

PART IV. SECT. 5.

se. *Contribution by one education authority to another—Parents not residing in area in which school situate.*]—The B. education authority granted bursaries to a number of children of persons resident in Arran for the purpose of facilitating their secondary education. There was no secondary school in Arran, & the children attended Ardrossan Academy, which is within the education authority. Except for two months in summer, the children left Arran for Ardrossan on Monday mornings, & they were boarded during the week with persons resident in Ardrossan, with whom they lived in family. On Saturday they returned home for the week-end, & they spent their holidays at their homes in Arran. The A. education authority claimed repayment of the cost of educating the children at Ardrossan from the B. education authority :—*Held :* pursuers were entitled to recover the cost of the children's education from defenders. Education (Scotland) Act, 1918 (*c.* 48), *s.* 10, discussed.—AYRSHIRE EDUCATION AUTHORITY *v.* BUTESHIRE EDUCATION AUTHORITY, [1926] S. C. 169.—SCOT.

PART IV. SECT. 6.

si. *Alteration of school section boundaries—Sufficiency of notice.*]—By a township bye-law, certain land was detached from one school section & added to another. Notice of the proposed alteration had been given by the township council by posting fourteen notices, seven in each of the sections, & publicity was given in the public press, though not by advertisement containing the formal notice. On an application for a declaration that the bye-law was invalid :—*Held :* Public Schools Act, 1920, *s.* 15 (1) (*b*), should be construed as leaving the notice to be given entirely to the discretion of the township council.—*Re* HOYLAND & YORK (1923), 55 O. L. R. 185.—CAN.

PART V. SECT. 1, SUB-SECT. 2.

si. *By whom taken.*]—A father, charged with failure to provide efficient education for his child upon a complaint at the instance of "the person appointed by the education authority for the county of Lanark to prosecute," objected on the ground that the proper prosecutor was the school management committee for the area, or the person appointed by them : —*Held :* the power, previously vested in school boards, to prosecute for education offences was included in the powers transferred to the education authority by 1918 Act, & had not been restricted by *s.* 3 (2) ; & the education authority, or the person appointed by

Part XII.—Reformatory and Industrial Schools.

138. ***Add. Citations:***—[1924] 1 K. B. 248; 93 L. J. K. B. 65; 130 L. T. 414; 27 Cox, C. C. 581.

Part XIV.—Universities and Public Schools.

176. ***Add. Annotation:***—*As to* (2) **Reld.** Short v. Poole Corpn. (1925), 42 T. L. R. 107.

Part XVII.—Schoolmasters and Teachers.

290. ***Add. Annotations:***—*As to* (2) **Reld.** Short v. Poole Corpn. (1925), 42 T. L. R. 107. | *Generally*, **Mentd.** R. v. Roberts, *Ex p.* Scurr, [1924] 2 K. B. 695; Reitzes do

them, could competently prosecute.—HIDDLESTON v. WILSON, [1924] S. C. (J.) 62.—**SCOT**

sk. *Under Education (Scotland) Act, 1872 (c. 62), s. 70.*)—The above sect. has not been impliedly repealed by Education (Scotland) Act, 1908 (c. 63), s. 8, & a prosecution under sect. 70 is competent, even though the real question at issue between the parent & the education authority is the selection of the school which the children are to attend. *Semble:* proceedings should not be taken under sect. 70 where there is a question of principle at issue between the parties.—CALDER v. ALEXANDER, [1926] S. C. (J.) 51.—**SCOT.**

PART X.

p 1. —— *Power of trustees—Sale of old site.*}—Under School Act, R.S.A., 1922, a board of trustees has power to purchase a new site for a school & remove the school building to it, &, with the Minister's approval, to sell the old site.—OLSTEAD v. COAL VALLEY SCHOOL DISTRICT NO. 1053, [1924] 1 W. W. R. 211.—**CAN.**

1 (p. 574) l. —— *Validity of bye-law prohibiting.*}—A bye-law passed by a city council under Municipal Act of Ontario, s. 399A, prohibiting in a certain district the erection of buildings except for use as private residences, is enforceable in respect of a school erected by the trustees of a separate school under their statutory powers.—TORONTO CORPN. v. ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658.—**CAN.**

PART XI.

g 1. —— *Annexation by urban municipality—Effect of.*}—WINDSOR v. TURNER, [1925] 2 D. L. R. 684; [1925] S. C. R. 413; *revsg.* 26 O. W. N. 221.—**CAN.**

sl. *City board—School in adjoining rural section—Equalisation of assessment.*}—An agreement was made in 1917 between the trustees of a rural school section adjoining a city & the board of education for the city for the erection & maintenance by the latter of a school house in the rural section, the pupils in the rural section to have the right to attend the school & the higher grade schools in the city, & the trustees of the rural section agreeing to pay a fixed annual sum to be raised by taxation:—*Held:* assuming the agreement was a valid one, School Law Amendment Act, 1922, s. 14, did not apply to the agreement, as it was not one for payment of any proportion of the cost of erecting & maintaining the school; & a judgment restraining the city board & arbitrators appointed to equalise the assessment in respect of the school from proceeding to do so, was affirmed.—YORK PUBLIC SCHOOL BOARD v. TORONTO BOARD OF EDUCATION (1923), 54 O. L. R. 216.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 4.

n 1. —— —— ——.}—When plff. was appointed to a professorship in 1916, no definite term was fixed:—*Held:* the ordinary rule that such a contract of employment could be terminated by reasonable notice on either side would apply, unless the particular nature of the contract or the circumstances in which it was made overrode the rule; & an appointment to a professorship without limitation of time could not be an appointment for life, subject only to good behaviour & ability to perform his duties, as such a contract must be mutual, & could be binding neither on the university nor on the professor.—CRAIG v. UNIVERSITY OF TORONTO (GOVERNORS) (1923), 53 O. L. R. 312.—**CAN.**

PART XVII. SECT. 4, SUB-SECT. 1.

am. *Duty of teacher to obey order of school board to suspend pupil.*}—If a teacher knows of no reason why a pupil be suspended or expelled & has received no complaint against the pupil, he is justified in refusing to obey an order of the school board to suspend such pupil.—LECLERC v. PEMBROKE SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1923] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—**CAN.**

PART XVII. SECT. 4, SUB-SECT. 2.

an. *General rule.*}—Where a child is sent by its parent or guardian to a school, they must be held to have given an implied consent to the infliction of such reasonable punishment as may be necessary for the purpose of school discipline, & the purpose with which the parental authority is delegated to the schoolmaster must to some extent include authority over the child when it is outside the school walls; but when the school is closed for any length of time for a period of regular holidays, the child then returns to the charge of its parent or guardian & the authority of the schoolmaster ceases.—R. v. MAUNG BA THAUNG (1925), I. L. R. 3 Ran. 659.—**IND.**

PART XVII. SECT. 5.

q 1. —— *Night school teacher—Liability of school board.*}—A night school teacher may recover on his contract with a school board, although it is not in the prescribed form or in writing.—LECLERC v. PEMBROKE SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—**CAN.**

q ii. *Computation of teaching period—Teacher prevented from teaching.*}—Where a school board wrongfully prevents a teacher from teaching, the time during which he is thereby unable to teach will be counted in his favour in determining whether he has been teaching continuously for the four months or more required to entitle him to the benefits of School Act, R. S. S., 1920 (c. 110), s. 195 (1). Holidays under sect. 177 of the Act should not be counted as actual teaching days under sect. 195 (1).—LECLERC v. PEMBROKE SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—**CAN.**

q iii. *School arbitrarily closed.*}—Where a school is closed arbitrarily by a school board, & a teacher, who is ready, willing & able to teach, is thereby prevented from teaching for the full two hundred & ten days on which, under School Act, R. S. A., 1922 (c. 51), s. 199 (1), his salary is based, he is entitled in a claim for salary to have the days during which the school was so closed credited to him as "actual teaching days."—STEPHENS v. CLAM CONSOLIDATED SCHOOL DISTRICT, NO. 60, TRUSTEES, [1925] 1 W. W. R. 745.—**CAN.**

q iv. *Scale Head teacher in secondary school.*}—An agreement by local teachers of secondary schools, as minimum scale is prescribed to which education authorities are bound to give effect in fixing salaries.—SMART v. PERTHSHIRE EDUCATION AUTHORITY, [1926] S. C. 108.—**SCOT.**

ap. *Decrease of salary—Revision of scale—From what date operative.*}—A revised scheme does not become operative until it has received the Education Department's approval.

The Department has no power to sanction a revised scheme retrospectively so as to affect a teacher's contractual right to his salary.—COULL v. FIFE EDUCATION AUTHORITY, [1925] S. C. 240.—**SCOT.**

290 1. *Differentiation of salaries—Graduate & non-graduate teachers—Effect of admitting non-graduate to graduate scale.*}—The admission of a non-graduate master to the graduate scale of salary does not preclude an education authority from treating him as a non-graduate teacher on a revision of the scales of salaries.—COULL v. FIFE EDUCATION AUTHORITY, [1925] S. C. 240.—**SCOT.**

Marienwert *v.* Administrator of Austrian Property, [1924] 2 Ch. 282; Roberts *v.* Hopwood, [1925] A. C. 578.

293a. **Death gratuity granted to legal personal representative of deceased teacher—Devolution on death of grantee.**]—A death gratuity granted by the Board of Education under the power conferred by School Teachers Superannuation Act, 1918 (c. 55), s. 3, to the legal personal representative of a deceased teacher, who died intestate & insolvent, leaving a widow & an infant daughter, will be treated as forming part of the estate of the intestate, & be primarily applicable in payment of the intestate's debts, & ought not to be held upon trust for his next of kin.—*Re* HAWKINS, HAWKINS *v.* DEW & SONS, [1926] Ch. 128; 95 L. J. Ch. 102; 135 L. T. 89; 42 T. L. R. 286.

297. *Add. Annotations*:—*As to* (1) **Reld.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107; Fennell *v.* East Ham Corpn., [1926] Ch. 641.

299. *Add. Citations*:—131 L. T. 55; 68 Sol. Jo. 403; 22 L. G. R. 138.

Add. Annotations:—*As to* (2) **Reld.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107; Fennell *v.* East Ham Corpn., [1926] Ch. 641.

302. *Add. Annotation*:—*As to* (1) **Consd.** Short *v.* Poole Corpn., [1926] Ch. 66.

302a. ——— **Bonâ fide exercise of discretion.**]—A local education authority has power to dismiss a married woman teacher in a public elementary school on the ground that, in the *bonâ fide* exercise of their discretion, they have come to the conclusion that it is impossible for her to look after her domestic concerns & effectively & satisfactorily to act as a teacher at the same time.—SHORT *v.* POOLE CORPN., [1926] Ch. 66; 95 L. J. Ch. 110; 134 L. T. 110; 90 J. P. 25; 42 T. L. R. 107; 70 Sol. Jo. 245; 24 L. G. R. 14, C. A.

Annotation: **Apld** Fennell *v.* East Ham County Borough Corpn. (1925), 89 J. P. Jo. 721.

302b. ——— ——— ——— **Onus of proof.**]—The council of defts. borough, as the local education authority, in pursuance of a recommendation of their education committee, made after exhaustive inquiries & discussion, resolved that the engagements of all married women teachers falling under certain specified categories should be terminated: &, accordingly, notice was given to each of pltfs. to terminate her engagement. Pltfs., three married women, had for several years been engaged under contracts terminable by a month's notice on either side, as assistant certificated teachers in some of defts.' schools, & were admittedly efficient teachers. It was proved that the object of the council in reducing the number of the married women teachers was to create vacancies for unemployed single women teachers whom the council trained for the teaching profession & for whom it was important in the interest of educational efficiency that teaching posts should be provided. In carrying out that policy, the council, with the view of minimising cases of hardship in the selection of married women teachers for dismissal, took into consideration the domestic circumstances & duties of the married women teachers & the earning capacity of their husbands. Pltfs. sought declarations that the notices of dismissal were invalid on the ground that the council in giving them did not act *bonâ fide* with the intention of discharging their statutory duties of maintaining educational efficiency, but acted with the illegitimate object of providing employment for unmarried women without reference to educational efficiency, of obliging married women teachers to confine themselves to home duties & of preventing those whose husbands were in regular employment from increasing the income of the joint home:—*Held*: (1) pltfs. failed to discharge the *onus* which lay upon them of showing that the policy adopted by the council of reducing the number of the married women teachers for the purpose of creating vacancies for unemployed single women teachers, & the steps taken to carry it out, were in excess of their statutory powers or were adopted or taken in pursuance of some illegitimate object; (2) the matters taken into consideration by the council were not irrelevant from an educational standpoint, but were material factors in determining, not only whether the policy ought to be adopted, but the best method of applying it; (3) as defts. had acted *bonâ fide* & within their statutory powers, the action ought to be dismissed. FENNELL *v.* EAST HAM CORPN., [1926] Ch. 641; 95 L. J. Ch. 119; 134 L. T. 276; 90 J. P. 36; 70 Sol. Jo. 324; 24 L. G. R. 76.

336. *Add. Annotation*:—*As to* (3) **Consd.** Short *v.* Poole Corpn., (1925) 42 T. L. R. 107.

PART XVIII.

a t. . . . .] Where the secretary of a school board, acting under its instructions, notifies in writing each of two or more appts. for a teacher's position that her applica-

tion has been accepted, but the board enters into the formal contract prescribed by statute with only one of them & notifies the others that their services will not be required, each of the latter has a right of action against the board as a corpn. for damages, but not against the members thereof individually or against the secretary.—MORRISON *v.* CASSELL HILL SCHOOL DISTRICT TRUSTEES, [1925] 1 W. W. R. 526.—CAN.

ELECTIONS.

Part VI.—Parliamentary Election.

851. *Add. Annotation :* **Distd.** Everett v. Ryder (1926), 135 L. T. 302.

Part VII.—Municipal and Other Elections.

1025a. —— —— —— Description as commonly understood.]—A nomination paper at an election of town councillors was subscribed with the full & correct name of "Charles Arthur Burman" as an assenting burgess: but his name was erroneously entered upon the burgess roll as "Charles Burman" only: —*Held:* the defect was not such as was remedied by Municipal Corporations Act, 1882 (c. 50), s. 211, the words "commonly understood" in that sect. meaning "commonly understood by any person comparing the nomination paper & the burgess roll." MOORHOUSE v. LINNEY, THORPE v. LINNEY (1885), 15 Q. B. D. 273; 53 L. T. 343; 49 J. P. 471; 33 W. R. 701; 1 T. L. R. 500, D. C.

Additions: **Distd.** Bowden v. Besley (1888), 21 Q. B. D. 309; Gledhill v. Crowther (1889), 23 Q. B. D. 136.

1038a. False statements Allegation that candidate is communist. Plffs., six labour candidates for the office of borough councillor at a municipal election then about to be held, moved to restrain defts. from publishing statements to the effect that plffs. were communists: *Held:* the statements com-

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PART V. SECT. 2, SUB-SECT. 5.

249 vii. For "1 D. L. R. 84" read "1 D. L. R. 265," & for "22 Man. L. R. 597" read "22 Man. L. R. 16."

PART V. SECT. 3, SUB-SECT. 5.

f i. —— *Non-compliance with statutory qualifications—Election Laws Amendment Act*, 1920, *s.* 6 (1), (2).] —Votes cast by persons whose names were on the lists, but who had not been residents of the electoral district for three months next preceding the day of polling:—*Held:* illegal.—MERCER v. HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—B. (a).

681 iv. —— —— —— *Speech at picnic instead of hiring hall.*]—MERCER v. HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—B. (b).

695 xix. For "23 D. L. R. 573" read "26 D. L. R. 573."

695 xxv. —— *Entertainment & picnic—At meeting of supporters for speech by candidate—Expense of hiring hall saved.*]—Payments were made by resp., through his official agent, for the services of a band & an entertainer at a picnic, a gathering of members of the party organisation supporting resp.'s candidature, & at which he made a speech:—*Held:* these payments, though they might be considered corrupt practices, were not made with corrupt intent, but with a belief in their propriety, as resp. by addressing the electors at the picnic was saved the expense of hiring halls, which would have been a legitimate expense.—MERCER v. HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 3.

b i. *Band & entertainment at picnic.*]—MERCER v. HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 10, SUB-SECT. 7.

ni. —— *Presumption that duties properly carried out.*]—*Re* PROVINCIAL ELECTIONS ACT, SMITH v. CATHERWOOD, [1925] 3 D. L. R. 770, [1925] 3 W. W. R. 54. **CAN.**

n ii. — *Breach of duties—Effect of.*] —Breaches by a presiding officer of the rules of procedure prescribed for the performance of his duties do not necessarily render an election void.—*Re* PROVINCIAL ELECTIONS ACT, SMITH v. CATHERWOOD, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54. **CAN.**

PART VI. SECT. 11, SUB-SECT. 3. A.

d (p. 109) **i.** *Counterfoil not wholly detached.*] —Ballots, from which the counterfoil has not been detached by the officer taking the ballot, should be counted on an election under Provincial Elections Act, 1920. Ballots to which only a small portion of the counterfoil remained attached, such portion furnishing no means of identifying the voter, should be counted.—*Re* DEWDNEY ELECTION APPEAL, SMITH v. CATHERWOOD, [1924] 3 W. W. R. 947. **CAN.**

f i. —— —— *On counterfoil.*] —Where the deputy returning officer did not initial the ballots in the manner prescribed by the statute, but initialled the counterfoils, which he afterwards destroyed:—*Held:* this irregularity did not affect the election.—MERCER v. HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

c (p. 110) **i.** —— —— At a general provincial election a plebiscite was also taken. Of twenty election ballots of absentee voters only nine were enclosed in envelopes bearing the affidavit required of such voters with respect to the election, while the other eleven were found in plebiscite envelopes bearing plebiscite affidavits. The affidavits required of such eleven absentee voters in the election were not sent to the returning officer nor accounted for in any way, & there was no evidence to show from which envelopes the votes for the respective candidates had been taken:—*Held:* in the absence of any evidence of fraud or collusion, the above facts were not grounds for declaring the election void.—*Re* PROVINCIAL ELECTIONS ACT, SMITH v. CATHERWOOD, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54.—**CAN.**

e (p. 110) **ii.** *Non-compliance by presiding officer.*] Absent voters' ballots, which have been enclosed in envelopes on which the presiding officer has failed to affix, as required by Provincial Elections Act, s. 106 3), his official mark across the line where the envelope is closed, should be counted.—*Re* DEWDNEY ELECTION APPEAL, SMITH v. CATHERWOOD, [1924] 3 W. W. R. 947. **CAN.**

PART VI. SECT. 12.

915 x. — *Unqualified persons allowed to vote—Illegal votes exceeding majority.*] Resp. was returned as elected by a majority of only 15 votes. The evidence showed that 21 votes were cast by persons who had no right to vote:—*Held:* the election should be declared void, although it could not be shown in whose favour the illegal votes were cast.—MERCER v. HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

915 xi. — *Ballot papers issued & accepted in excess of voters on register.*] —Where in a polling subdivision 137 ballots were found in the box & only 134 names appeared in the poll book:—*Held:* an irregularity, which did not affect the result of the election.—MERCER v. HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 13.

m. For "—— *Power of Supreme Court to compel*" substitute "*Recount—Power of Supreme Court to compel.*"

PART VII SECT. 5, SUB-SECT. 1. C.

c i. —— —— *Casting vote given by Ld.*] —On an election for a councillor of a municipality, the votes cast showed a tie between the two candidates. The returning officer then prepared a number of slips which were put in a hat & mixed up. The returning officer asked a voter to draw, stating he would give the casting vote to the candidate whose name first appeared. On the petition of the unsuccessful candidate:—*Held:* the election was void & a new election ordered.—*Re* MUNICIPAL ELECTIONS ACT & TOMSETT, [1924] 1 D. L. R. 921; 33 B. C. R. 377. **CAN.**

plained of were not false statements as to personal character within Municipal Elections (Corrupt & Illegal Practices) Act, 1884 (c. 70). BURNS v. ASSOCIATED NEWSPAPERS, LTD. (1925), 89 J. P. 205; 42 T. L. R. 37.

1075. *Add. Citation:—sub nom. Re* SAFFRON WALDEN ELECTION, *Ex p.* ROBSON, 51 J. P. 199.

1089. *Add. Citation:—sub nom.* R. *v.* EXETER (MAYOR), 3 J. P. 49.

1090. For the existing paragraph substitute the following paragraph:—
S.P.—R. *v.* GLOUCESTER (MAYOR) (1838), 2 J. P. 777.

1103. After this case add "*See, now,* Municipal Corporations Act, 1882 (c. 50), s. 34 (1).

Part IX.—Petitions.

1593. *Add. Annotation:—As to* (2) **Consd.** Cambridge County Council Petn., Fordham *v.* Webber, [1925] 2 K. B. 740.

1593a. **"Candidate"—Necessity for declaration or nomination.**]—An election for the office of county aldermen took place at a meeting of a county council, & voting papers were signed & personally delivered to resp., who was chairman of the county council & of the meeting, & were openly produced & read by him. Amongst the voting papers was one containing a vote for petitioner, by writing his name & address on the voting paper, as a county alderman. Forty-four voting papers contained votes for resp. as a county alderman. Neither petitioner nor resp. had before the election declared himself to be a candidate at the election of county aldermen. Resp. declared himself to be elected amongst others a county alderman, & petitioner was not elected. Petitioner, alleging himself to have been a candidate at the election, presented a petition against the election of resp.:—*Held:* petitioner was not right in alleging himself to have been a candidate at the election for county aldermen, as he had not been elected & had not declared himself before the election as a candidate for election, & the writing by the voter of petitioner's name & address on the voting paper did not amount to a nomination of him as candidate within Municipal Corporations Act, 1882 (c. 50), s. 77, & he was not, under s. 88 of the Act, entitled to present a petition for the purpose of questioning the election of resp.—CAMBRIDGE COUNTY COUNCIL CASE, FORDHAM *v.* WEBBER, [1925] 2 K. B. 740; 94 L. J. K. B. 891; 89 J. P. 181; 41 T. L. R. 634; 69 Sol. Jo. 779, D. C.

PART VII. SECT. 5, SUB-SECT. 2. C.

ao. *Secrecy of ballot—Necessity for.*] Where at an election of a mayor & aldermen the provisions of Consolidated Municipal Act, 1922, enjoining secrecy of the ballot were generally ignored—*Held:* the non-compliance with the provisions of the Act had affected the result of the election, & a new election ordered. R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—CAN.

PART VII. SECT. 5, SUB-SECT. 3. C.

ap. *Secrecy of ballot—Necessity for.*] Where at an election of aldermen of a city the provisions of Consolidated Municipal Act, 1922, requiring secrecy of the ballot were generally ignored—*Held:* the election was invalid. R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286. CAN.

PART IX. SECT. 1, SUB-SECT. 2. E.

p. [illegible]—*Held:* Controverted Elections Act, R. S. S. 1920 (c. 5), s. 4 (c), had been complied with by a petition which alleged that resp. "was guilty of, by himself & his agents, corrupt practices within Saskatchewan Election Act, R. S. S. 1920 (c. 3), ss. 247, 249, 251 & 252, & amendments thereto." ADAMS *v.* HUCK, [1925] 3 W. W. R. 546.—CAN.

ar. *Proof of identity of petitioners & execution of petition.*]—The identity of petitioners & their execution of the petition should be proved by calling each petitioner to prove his own identity & status.—*Re* MUNICIPAL ACT, HEATHER *v.* MADDOCK, [1925] 2 W. W. R. 464. CAN.

PART IX. SECT. 2, SUB-SECT. 1.

p. [illegible]—*United Provinces Municipalities Act, 1916.*]—There is no right of appeal against the order of a comr. on an election petition presented to him under United Provinces Municipalities Act, 1916.—ABDUR RAHMAN, SON OF ISMAIL *v.* ABDUR RAHMAN, SON OF ZAHURI (1925), I. L. R. 47 All. 513.—IND.

ar. *Whether civil action lies.*]—A suit will not lie in a civil ct. for a declaration that the result of a municipal election has been wrongly declared & that plff. is the person entitled to be declared elected.—ABDUR RAHMAN, SON OF ISMAIL *v.* ABDUR RAHMAN, SON OF ZAHURI (1925), I. L. R. 47 All. 513.—IND.

PART IX. SECT. 2, SUB-SECT. 2.

aw. *Joinder of parties.*]—Consolidated Municipal Act, 1922, s. 172 (1) (a), does not give power to join a city corpn. as an "other person," as a party to proceedings to avoid a municipal election.—R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—CAN.

ELECTRIC LIGHTING AND POWER.

Part II.—Powers, Duties, and Liabilities of Undertakers.

5. *Add. Annotations :—As to* (1) **Folld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *As to* (2) **Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *As to* (3) **Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

6a. **Abstraction of water—"Other source."**]—The King George Reservoir, belonging to the Metropolitan Water Board, is a "river, stream, canal, inland navigation or other source," within Electricity (Supply) Act, 1919 (c. 100), s. 15 (1).—METROPOLITAN WATER BOARD *v.* TRANSPORT MINISTER (1925), 90 J. P. 52; 42 T. L. R. 165; 24 L. G. R. 289.

10. *Add. Annotation :*—**Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

42a. —— **Supply to premises partly outside area—Point of supply within area.**]—Defts. were authorised by the County of London (Northern Extensions) Electric Lighting Order, 1897, made under Electric Lighting Acts, 1882 (c. 56) & 1888 (c. 12), to supply electricity within an area adjoining the relators' area of supply. Sect. 6 of the Order prohibited the supply of energy by defts. beyond their area of supply, & Electric Lighting Act, 1909 (c. 34), s. 23, contains a general prohibition against supplying energy outside an authorised area. Defts. entered into a contract to supply a firm having a small part of its premises within defts.' area of supply & the remainder of the premises in the relators' area of supply. For the purpose of this contract defts. erected their apparatus on the part of the premises of the firm within their area, & the consumers' terminals, that is, the point where the electricity was passed from defts.' service lines to the lines on the firm's premises owned & controlled by them, were also on that part of the premises. The use of electricity on this part of the premises was trivial. In the circumstances the A.-G. brought an action on the relation of the relators to restrain defts. from supplying energy to the firm outside their area :—*Held :* the point of supply was the consumers' terminals, & as the firm's terminals were within defts.' area, defts. had not committed any breach of the prohibitions in their Order & the Act of 1909.—A.-G. *v.* COUNTY OF LONDON ELECTRIC SUPPLY CO., [1926] Ch. 542; 95 L. J. Ch. 357; 135 L. T. 601; 42 T. L. R. 328; 70 Sol. Jo. 486.

52. For the paragraph in the original volume substitute the following paragraph :—

—— **Not incompatible with performance of statutory duties.**]—By a Provisional Order of 1898 the B. Council were constituted electricity undertakers in B. with power to charge up to a certain maximum price, but with authority to make special agreements with particular consumers as to price. By a transfer deed of Dec. 31, 1901, approved by the Board of Trade, the B. Council transferred the undertaking to defts. with a provision for retransfer if defts. made default in their obligations as undertakers. By a supplemental deed of same date, made without the approval of the Board of Trade, defts. agreed with the B. Council not to charge higher prices than those charged in the adjoining borough of S. In 1911 the B. district & the contractual rights of the B. Council were transferred to pltfs., the S. Corpn., but defts. still remained electricity undertakers in B. Defts. having recently begun to charge higher prices than pltfs., pltfs. brought an action to restrain their breach of agreement. Defts. contended that their agreement was *ultra vires* both under Electric Lighting Act, 1882 (c. 56), s. 11, which prevented them from divesting themselves of their statutory powers without the consent of the Board of Trade, & also under the general law applicable to statutory undertakings :—*Held :* the agreement was a business transaction into which defts. might reasonably enter; it did not fetter the powers of defts. & was not incompatible with the performance by them of their statutory duties, & was not therefore *ultra vires*.—SOUTHPORT CORPN. *v.* BIRKDALE DISTRICT ELECTRIC SUPPLY CO., [1925] Ch. 794; 94 L. J. Ch. 371; 133 L. T. 351; 89 J. P. 149; 69 Sol. Jo. 523; 23 L. G. R. 490, C. A.; *affd. sub nom.* Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355; 95 L. J. Ch. 587; 134 L. T. 673; 90 J. P. 77; 42 T. L. R. 303; 24 L. G. R. 157, H. L.

67. *Add. Annotation :*—**Mentd.** Horton's Estate *v.* Beattie (1926), 42 T. L. R. 701.

72. *Add. Annotations :*—**Consd.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Refd.** Ilford U. C. *v.* Beal,

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PART II. SECT. 9, SUB-SECT. 2.

g l. —— —— *Erection of poles.*]—The Hydro-Electric Power Commission of Ontario has no right, either under Power Commission Act, 1915, s. 5, or otherwise, without the consent of the municipal corpn. controlling a highway, to place poles & wires upon the highway.—HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO *v.* GREY COUNTY (1924), 55 O. L. R. 339.—CAN.

PART II. SECT. 11, SUB-SECT. 2.

11. —— —— *Failure by default of undertaker.*]—In an action for damages for failure to supply electric power under a contract made in Nov. 1912 between the parties, it was admitted that defts. had developed enough power in Jan. 1921, when the shortage occurred, to have supplied all requirements of pltfs., & that they did not give them the power owing to the requirements of other customers :—*Held :* defts. could not set up the requirements of other customers as modifying what on the face of the contract with pltfs. made compliance with pltfs.' demands an absolute undertaking.—HOLLINGER CONSOLIDATED GOLD MINES, LTD. *v.* NORTHERN CANADA POWER CO., LTD., [1923] 4 D. L. R. 1205; 54 O. L. R. 505.—CAN.

[1925] 1 K. B. 671; Booth *v.* Thomas (1926), 95 L. J. Ch. 160; Smith *v.* G. W. Ry. (1926), 135 L. T. 112. **Mentd.** Hines (1926), 95 L. J. K. B. 773. Tousley

Part IV.—Special Legislation—Power Acts.

111. *Add. Annotation:*—**Consd.** Southport Corpn. *v.* Birkdale District Electric Supply Co., [1925] Ch. 791.

PART II. SECT. 25.

aa. *Property in ... on ... bulbs.*] *Held:* the words "dynamos, poles & wires" in 3 Edw. 7, 1903, c. 45, s. 20, refer to the equipment necessary to render electricity available for the ratepayers generally, as ... l with equipment necessary ... any individual ratepayer. The expression "al other machinery" ... *ejusdem generis* with the ... ls "dynamos, poles & wires" ... not include tram- ... or electric bulbs in private houses or factories, & which would only benefit the individual ratepayers & not the general body of the ratepayers.—*Ex p.* LEWIS, [1923] 1 D. L. R. 146; 50 N. B. R. 416.—**CAN.**

PART II. SECT. 27.

sb. *Whether compulsory—Agreement with provision for arbitration confirmed by statute.*] An agreement between a municipality & a co. for the supply of electric light & other services to the citizens of the municipality contained a clause for the adjustment of rates in future between the parties with provision for arbn., & an Act was passed in 1906 confirming it & declaring it binding upon the parties:—*Held:* the effect of the Act was not to turn the clause in the agreement into a statutory obligation to go to arbn. but the Act only made valid & binding what without it might have been an invalid agreement.—RED DEER (CITY) *v.* WESTERN GENERAL ELECTRIC CO., [1924] 2 D. L. R. 317; 1 W. W. R. 1092; 20 Alta. L. R. 372.—**CAN.**

EQUITY.

Part II.—Equitable Maxims.

44. *Add. Annotation :*— **Refd.** Wright *v.* Morgan, [1926] A. C. 788.

76. *Add. Citation :*—132 L. T. 21.

108. *Add. Annotation :*— **Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

159. *Add. Annotation :* As to (2) **Apld.** *Re* Watt, [1926] Ch. 962.

Part III.—Equitable Jurisdiction or Equitable Relief.

303. *Add. Annotation :*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

332. *Add. Annotation :*— **Mentd.** Ouellette *v.* Canadian Pacific Ry., [1925] A. C. 569.

347. *Add. Annotation :*—**Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

358. *Add. Annotation :* **Refd.** *Re* Barratt, National Provincial Bank *v.* Barratt, [1925] Ch. 550.

Part IV.—Exercise of Equitable Jurisdiction by the High Court.

482. *Add. Annotation :* *Generally*, **Mentd.** The City of Baroda (1926), 134 L. T. 576.

Part VI.—Priority.

511. *Add. Annotations :* **Apld.** Commonwealth Trust *v.* Akotey, [1926] A. C. 72. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

Part VII.—Notice.

687. *Add. Annotation :*—As to (1) **Refd.** Kreditbank Cassel G.m.b. H. *v.* Schenkers, [1926] 2 K. B. 450.

727. *Add. Annotation :* **Apld.** Melzak *v.* Lahenfeld, [1926] Ch. 180.

746. *Add. Annotation :* **Refd.** *Re* Des Reaux & Setchfield's Contract, [1926] Ch. 178.

PART II. SECT. 5, SUB-SECT. 1.

97 i. *Imposition of equitable terms — As condition of relief.*]—A person who seeks equity must do equity, & therefore one who demands performance of an agreement to hold property in trust for him must be content to have the agreement equitably construed.—*In re* REGAL PHONOGRAPH CO., *Ex p.* TRUSTEE, [1924] 1 D. L. R. 947; 4 C. B. R. 418.—**CAN.**

PART II. SECT. 6.

130 vi. ——— ———.] —McGUIRE *v.* PROSSER, [1925] 3 D. L. R. 866.—**CAN.**

PART III. SECT. 3, SUB-SECT. 8.—B. (a).

8d. *Materiality of error — Parties in fiduciary relationship.*]—The cts. will grant permission to reopen an account that has been settled for errors less considerable than usual where the parties stand in a fiduciary relationship.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART III. SECT. 3, SUB-SECT. 8. B. (b).

318 iv. ———.] Where a single fraudulent error is discovered in settled accounts, the proper order for the ct. to make is for the reopening of the whole account. RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1. **IND.**

PART III. SECT. 3, SUB-SECT. 8. C.

362 ii. ——— *For what mistakes.*] Where an error of importance has been proved in an account stated, though such error may not be important enough to justify the opening of the settled accounts, the ct. should permit the accounts to be surcharged & falsified generally. RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

362 iii. ——— *Parties in fiduciary relationship.*]—The cts. will grant permission to surcharge & falsify an account that has been settled for errors less considerable than usual where the parties stand in a fiduciary relationship.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

366 i. *Overcharge Acquiesced in.*] Where an overcharge has been paid by a principal with knowledge of the overcharge & without protest, he cannot be permitted to question such payment after the accounts have been settled. RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1. **IND.**

PART VI. SECT. 2, SUB-SECT. 2.—A.

614 i. *Time alone insufficient to give priority.*] A widow & administratrix had carried on the business of deceased. & appointed her son to act as manager, giving him cheques blank as to the amount, & signed on behalf of the trading co. With this money the son purchased various securities which he lodged with the bank to secure overdrafts for himself & for the co. The next of kin sought a declaration that the securities were assets of deceased, & were held by the bank in trust for them:—*Held:* the equitable estate of the bank took precedence over the equity of the next of kin in spite of the latter's priority of time.—SCOTT *v.* SCOTT (1924), 58 I. L. T. 137.—**IR.**

Part VIII.—Equitable Assignments.

770. *Add. Annotation :*—**Distd.** Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298.

Part IX.—Conversion and Reconversion.

803. *Add. Annotation :* **Refd.** *Re* Carnarvon's Chesterfield S. E., *Re* Carnarvon's Highclere S. E. (1926), 70 Sol. Jo. 977.

815a. — — **Fines & Recoveries Act, 1833 (c. 74), s. 71.**]—Testator, who died in 1875, specifically devised an undivided share in freeholds to his son P. for life with remainders which never took effect & devised the residue of his real estate upon limitations which in 1878 were held by the ct. to give testator's son W. an estate tail therein. In 1877 the freeholds, the undivided share in which was devised to P. for life, were sold under Leases & Sales of Settled Estates Act, 1856 (c. 120), & the proceeds of sale representing such share were paid into ct. After the sale W., who had previously executed a disentailing deed dealing in general terms with the lands devised to him by testator's will, executed another disentailing deed dealing in terms with the undivided share & the money in ct. resulting from the sale thereof. Neither of these deeds was executed with the consent of P. as the protector of the settlement. W. died in the lifetime of P. having by his will devised his residuary real estate to applt. & bequeathed his personal estate to resps. At the death of P. in 1920 applt. petitioned for payment out of ct. of the money, claiming that it had passed to him as residuary devisee of W. :—*Held :* the money retained the character of real estate inasmuch as Fines & Recoveries Act, 1833, s. 71, did not convert disentailed money into personal estate for all purposes, but merely directed that it should be treated as personal estate for the purpose of the form of a disentailing deed.—*Re* DICKSON'S SETTLED ESTATES, [1921] 2 Ch. 108; 90 L. J. Ch. 453; 125 L. T. 528; 65 Sol. Jo. 532, C. A.

859. *Add. Annotation :*—**Mentd.** *Re* Gray, Public Trustee *v.* Wodehouse (1926), 70 Sol. Jo. 1112.

Part X.—Election.

1424a. — — **Legacy to heir-at-law—Will inoperative to pass real estate.**]—C., by his will, gave all he should leave in the world to trustees to pay his debts & legacies, among which was £1,000 to A., his brother & heir, & as to the residue in trust for natural children. Testator had real estate in Nova Scotia, but, as there were no witnesses to his will, it descended to the heir-at-law :—*Held :* supposing the words of the will would have passed real estate, if attested in due form, which was doubted, A. was entitled to his legacy, & also to the real estate.—FARQUHARSON *v.* COLVILLE (LORD) (1772), Rom. 129, L. C.

1439. *Add. Annotation :*—**Mentd.** *Re* Field, Sanderson *v.* Young, [1925] Ch. 636.

Part XI.—Satisfaction and Ademption.

1753. *Add. Annotation :* **Folld.** *Re* Ware, *Re* Rouse, Ware *v.* Rouse (1926), 70 Sol. Jo. 691.

1873. *Add. Annotation :*—**Apld.** *Re* Ware, *Re* Rouse, Ware *v.* Rouse (1926), 70 Sol. Jo. 691.

1873a. — — — — —.]—There is no such obligation, according to the rules of equity, on a mother to advance or make a provision for her child, as in the case of a father; &, therefore, when a mother makes a purchase or investment in the name of her child, or in the joint names of herself & her child, that does not of itself afford the presumption of advancement; in such a case the intention to advance is a question of evidence.—BENNET *v.* BENNET (1879), 10 Ch. D. 474; 40 L. T. 378; 27 W. R. 573.

Annotation :—**Refd.** *Re* Orme, Evans *v.* Maxwell (1883), 50 L. T. 51.

1873b. — — — — —.]—(1) No presumption arises in cases of dispositions in favour of children by a mother unless she has placed herself *in loco parentis* towards them, & evidence that such is the case must be forthcoming.

(2) Where testatrix exercised a general power of appointment by will in favour of her daughter, & subsequently on the daughter's marriage covenanted in her daughter's mar-

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PART X. SECT. 3, SUB-SECT. 9.

80. *Widow taking different interests under will.*]—Under S.'s will his widow took absolutely thirty-four acres devised to her worth $1,000; she also took for life his house & lot garden worth about $1,500, but subject to a son's & a daughter's right "to have a home" there "so long as they are single." The son took absolutely the rest of testator's land, worth about $3,500, & at the widow's death took "the house & lot & garden" also :—*Held :* the widow was not put to her election.—*Re* SMITH (1925), 57 O. L. R. 283.—CAN.

riage settlement to pay a similar amount to the trustees thereof, & later by codicil recited the appointment of a certain sum by the will:—*Held:* the provision in the marriage settlement was by way of satisfaction or ademption of the powers made by the will, & the codicil was not inconsistent with such a view.—*Re* WARE, *Re* ROUSE, WARE *v.* ROUSE (1926), 70 Sol. Jo. 691.

2030a. [——.] *Re* WARE, *Re* ROUSE, WARE *v.* ROUSE, No. 1873b, *ante*.

2101. *Add. Annotation:* **Mentd.** *Re* Pennington & Owen, [1925] Ch. 825.

Part XVIII.—Equitable Defences.

2512. *Add. Annotation:—As to* (4) **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

2513. *Citations:*—For "L. R. 5 C. P. 221" read "L. R. 5 P. C. 221."
Add. Annotation:—As to (2) **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

2527. *Add. Annotation:* **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2541. *Add. Annotation:* **Mentd.** The St. George, [1926] P. 217.

PART XVI. SECT. 1, SUB-SECT. 2.—D.

11. —— ——.]—In the case of a sale when the conditions are that the purchaser shall forfeit the money which he has paid if he makes default in any future payment, the ct. will relieve the purchaser from forfeiture where the non-payment has been the result of the deliberate misrepresentations of the vendor, in order to expose the purchaser to forfeiture. *Re* STANLEY & BUNTING, [1924] 3 D. L. R. 599; 5 C. B. R. 18.—**CAN.**

PART XVIII. SECT. 4, SUB-SECT. 4. B.

2579 i. *Rescission on ground of fraud.*] Where deft. raises a defence of fraud & misrepresentation, the ct. will not grant him relief if he has been guilty of *laches*. On discovering the fraud or misrepresentation it is the duty of deft. to repudiate the transaction immediately. MCINTOSH *v.* HEGO, [1924] 1 D. L. R. 272.—**CAN.**

ESTATE AND OTHER DEATH DUTIES.

Part II.—Estate Duty.

27. *Add. Annotations:* —*As to* (1) **Refd.** Parr *v.* A.-G., [1926] A. C. 239. *As to* (5) **Consd.** Parr *v.* A.-G., [1926] A. C. 239.

39. *Add. Citation:*—132 L. T. 704.

72. *Add. Annotation:* —*As to* (2) **Refd.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

75. *Add. Citations:*— 94 L. J. K. B. 139; 132 L. T. 717.

94. *Add. Annotation:* —**Apld.** A.-G. *v.* Howe (1925), 94 L. J. K. B. 540.

99. *Add. Annotation:*—*As to* (4) **Refd.** *Re* Bateman, [1925] 2 K. B. 429.

107a. —— —— ——.]—By settlements made in 1906 & 1911, a lady, in consideration of £5,100 which was paid over to her by her son, conveyed certain furniture upon trust for herself for life with remainder to her son absolutely. At her death in 1918 the furniture was sold for £45,000, & the Crown claimed succession duty & estate duty upon the difference between the two sums from the trustee of the settlements: —*Held:* (1) the transaction was a *bonâ fide* sale between mother & son, & no succession duty was payable; (2) as to the claim for estate duty, there had been a "purchase for partial consideration" within 1891 Act, s. 3 (2), the consideration paid represented four-fifths of the value of the property at the date of such purchase, & estate duty was payable only upon one-fifth of the value as at the date of the death of the tenant for life; (3) "partial consideration," in sect. 3 (2), meant something less than the full & fair value as between buyer & seller.—*Re* BATEMAN (BARONESS), [1925] 2 K. B. 429; 95 L. J. K. B. 199; *sub nom. Re* BATEMAN (BARONESS), A.-G. *v.* WRIFORD-BROWN, 131 L. T. 153.

121. *Add. Annotation:* —*As to* (2) **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

128. *Add. Annotations:* **Refd.** *Re* Exmouth's Annuity, [1925] Ch. 280; *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

128a. —— —— **"Land & chattels" — What are "chattels."**]— By an Act of 54 Geo. 3 an annuity of £2,000 was inalienably settled on Lord E. & his successors in title. In 1892 the redemption of the annuity for a sum of £55,890 was agreed upon, & that amount was paid into ct. & invested in the purchase of Consols. The fifth Viscount E. died in Aug. 1922, & the sixth Viscount in Feb. 1923. Questions having arisen as to the payment of estate duty, the ct. was asked whether estate duty became payable (*a*) upon the capital of the sum of Consols, or (*b*) upon the value of the interest of the successor to the title in such sum of Consols, & if estate duty became so payable, then whether, for the purpose of determining the rate of estate duty, such sum of Consols ought (*a*) to be aggregated with the other property, or (*b*) to be treated as an estate by itself:—*Held:* "chattels" in collocation with settled lands in 1894 Act, s. 5 (5), did not suggest personalty generally, but those particular items of it which were usually settled upon trusts that followed the devolution of the settled land, & the sum of Consols was not "chattels" within the sub-sect., & must be aggregated with the other property for the purpose of paying estate duty.—*Re* EXMOUTH'S ANNUITY, [1925] Ch. 280; 94 L. J. Ch. 208; 133 L. T. 39; 69 Sol. Jo. 411.

129a. —— **Where duty commuted—Not aggregated with unsettled property.**]—Where estate duty has been commuted under 1894 Act, s. 12, the property in respect of which the commutation has been made is not property on which "estate duty is leviable" within s. 1 of that Act & is not to be aggregated with other property of the same person on which estate duty is leviable.—A.-G. *v.* HOWE (EARL) (1925), 94 L. J. K. B. 540; 133 L. T. 801; 41 T. L. R. 610; 69 Sol. Jo. 791, C. A.

131. *Add. Citations:* —*affd. sub nom.* PARR *v.* A.-G., [1926] A. C. 239; 95 L. J. K. B. 417; 134 L. T. 321; 42 T. L. R. 217, H. L.

155. *Add. Annotations:*—*As to* (1) **Expld.** *Re*

PART II. SECT. 4, SUB-SECT. 2.

8a. "*Interest in business*" *What is* 1914 Act, s. 15.]—A father & two of his sons carried on business in partnership. By a rearrangement of the partnership relations the father accepted £124,646 in full of his whole rights in the old firm & its assets, & agreed to allow this sum to remain as a loan to the new firm at 4 per cent. interest, on condition that, if called up by him, or in any event on his death, it was to be repaid by ten yearly instalments. The father contributed no capital to the new firm apart from the loan, but had an interest in the profits to the extent of a one-tenth share. He died in 1922, leaving a will by which he bequeathed the residue of his estate, including the loan, to his family, & estate duty was duly paid thereon. The two sons came to an arrangement with their father's exors., under which the sons agreed to repay the loan at once in return for a certain discount; & in settling with the exors., they retained in the business the respective shares of the loan falling to them, by crediting themselves with the amounts in the books of the firm. Within two years of the father's death one of the sons died, & estate duty became payable on his estate. His exor. having claimed a reduction, under the above sect., of the estate duty payable on the sum credited to the son in the firm's books in respect of his share of his father's loan:—*Held:* the father's right to repayment of the loan was not an "interest in the business" within the sect., & the sum standing in the son's name in the books of the firm was an interest in the assets of the firm, & was not identical with his father's interest in the *jus credili* of the loan. GLEN *v.* INLAND REVENUE, [1926] S. C. 44. **SCOT.**

PART II. SECT. 4, SUB-SECT. 4.

d. For "*Charitable purposes—In Australia & abroad,*" read "*Charitable purposes — In Australia — & abroad.*"

d 1. —— —— ——.]—By Estate Duty Assessment Act, 1914, s. 5 (5), estate duty is not to be assessed upon so much of the estate as is bequeathed "for religious, scientific, charitable or public educational purposes":—*Held:* as no contrary intention appeared, the word "charitable" was to be construed in its legal & not its popular sense.—CHESTERMAN *v.* FEDERAL COMR. OF TAXATION, [1926] A. C. 128, 95 L. J. P. C. 39; 134 L. T. 360; 42 T. L. R. 131.—**AUS.**

Portman (No. 2), [1925] Ch. 294; **Distd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

161. *Add. Annotations :*—**Followed.** *Re* Portman (No. 2), [1925] Ch. 294. **Distd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

161a. —— ——.]—A rentcharge of £50,000 *per annum* charged on L. settled estates was limited to the use of deft., the fourth Viscount P., for life with remainder to the use of his eldest son during his life, to commence from their respective successions to the title & to be paid without any deduction except for death duties, & a similar rentcharge was limited in remainder, in the event of any other issue of the fourth Viscount succeeding to the title, to the use of the sons of such eldest son & other sons of the fourth Viscount in tail male. Subject to such rentcharge, the L. settled estates were limited to the use of pltf. for life with remainder to the use of his eldest son for life with remainders over. By a deed poll dated Oct. 15, 1913, provision was made for the abatement of the £50,000 rentcharge in certain events. The third Viscount, who was tenant for life of the estates in question, had died in 1923, while nine of the sixteen half-yearly instalments of estate duty payable in respect of the death of the second Viscount, who had died in 1919, remained unpaid. One of the questions for the decision of the ct. at the original hearing of the summons (*Re Portman (Viscount)*, No. 249, *post*) was as to what proportion of the balance remaining unpaid at the death of the third Viscount of the estate duty, which became assessable on the death of the second Viscount in respect of the L. estates, should be borne by the yearly rentcharge of £50,000, & it was admitted in argument that there was no difference in principle in respect of that unpaid balance between that duty & that which was assessable upon the death of the third Viscount. After judgment had been delivered & before the minutes had been finally drawn up, leave was given to withdraw the admission made in argument as aforesaid, & it was directed that the question with regard to the liability of the rentcharge in respect of the unpaid instalments of estate duty assessable on the death of the second Viscount should be argued :— *Held :* the effect of 1894 Act, s. 14 (1), was to throw the incidence of the duty ratably & in proper proportions upon all persons becoming beneficially interested in the property upon which the duty was constituted a first charge by force of sect. 9 (1) of the Act; the rentcharge, or the abated rentcharge, must be dealt with, as regards these unpaid instalments, in the manner indicated in the original judgment; & the order would be in the terms of the minutes prepared in accordance with that judgment.—*Re* PORTMAN (VISCOUNT) (No. 2), [1925] Ch. 294; 94 L. J. Ch. 329; 133 L. T. 380.

226. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

229. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

233. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

234. *Add. Annotation :*—**Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

238. *Add. Annotation :*—**Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

239. *Add. Citations :*—94 L. J. Ch. 155; 132 L. T. 339.

244a. —— ——.]—An assignee for value of a sum of £10,000 to be paid "absolutely & free from incumbrances," being part of a portions fund of £15,000 charged on settled land :— *Held :* in the absence of a special contract in that behalf, not to be liable to pay a ratable proportion of the estate duty borne & payable by the portions fund upon the death of the tenant for life of the settled land.

Sect. 11 (1) of the above Act provides for a ratable recoupment between the person who has paid estate duty in respect of property passing on death, & the person entitled to a sum charged on that property. It does not go on to provide for further recoupment by persons entitled derivatively to various parts of the sum so charged, but leaves their rights to be determined by their contractual arrangements. *Re* DRAKE, DRAKE *v.* WILSON, [1926] Ch. 559; 95 L. J. Ch. 386; 134 L. T. 362, C. A.

246. *Add. Annotation :* **Refd.** *Re* Portman (No. 2), [1925] Ch. 294.

249. *Add. Citation :*—132 L. T. 440.

261. *Add. Annotation :* As to (2) **Refd.** *Re* Abergavenny S. E., Abergavenny *v.* Nevill, [1926] Ch. 165.

262. *Add. Annotation :* **Consd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

264. *Add. Annotations :* As to (1) **Refd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559. *Generally*, **Mentd.** *Re* Hardyman, Teesdale *v.* McClintock, [1925] Ch. 287.

274a. **Out of corpus Estate settled by Act of Parliament Whether duty unpaid.** Where the formal assessment of estate duty on an inalienable estate settled by Act of Parliament is not made until after the passing of Finance Act, 1922 (c. 17), although sufficient money has before the passing of the Act been paid over to the Inland Revenue, the duty is still unpaid within sect. 14 of the Act &, at the option of the tenant in tail in possession, may be raised & paid out of the corpus of the settled estate. A person entitled to a rentcharge on such an estate under a private Act of Parliament which gives the owner for the time being of the estate the right to create a rentcharge is not entitled to exercise a similar option. The estate duty is payable out of the rentcharge itself. *Re* ABERGAVENNY SETTLED ESTATES, ABERGAVENNY (MARQUIS) *v.* NEVILL, [1926] Ch. 465; 95 L. J. Ch. 289; 134 L. T. 662; 70 Sol. Jo. 631.

277a. —— **Deduction of income tax.**]—In accordance with 1896 Act, s. 18 (1),

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PART II. SECT. 9, SUB-SECT. 3.

a1. *Aggregation of settled funds—Whole estate subject to duty at higher rate.*]—Deceased made a settlement of property on her marriage, & on her death left a will. The rate at which duty was assessed was 6 per cent., & if the value of the settled property had not been included in the final balance, the rate would have been 4½ per cent. The exors. claimed that the trustees of the settlement were liable to bear the difference :—*Held :* the incidence of the duty was governed by Death Duties Act, 1909, s. 31 (4), & the exors.' claim could not be sustained.—BROWN *v.* BROWN, [1924] N. Z. L. R. 427.—N.Z.

trustees paid to the Crown certain sums of interest on unpaid estate duty without deduction of income tax:—*Held:* for the purposes of assessment to income tax under Income Tax Act, 1918 (c. 40), sched. D, Case III., in respect of untaxed interest received by the trustees, they were not entitled to any deduction therefrom in respect of the interest on estate duty paid by them.—INVERCLYDE'S (LORD) TRUSTEES *v.* MILLAR, [1924] A. C. 580; 9 Tax Cas. 14; *sub nom.* INVERCLYDE'S (LORD) TRUSTEES *v.* INLAND REVENUE COMRS., 93 L. J. P. C. 266; 131 L. T. 739, H. L.

Part III.—Settlement Estate Duty.

288. *Add. Annotation:*—**Mentd.** Dewhurst *v.* Salford Grdns., [1925] Ch. 655.

Part IV.—Legacy Duty.

414. *Add. Annotation:*—*As to* (2) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

Part V.—Succession Duty.

591. *Add. Annotation:*—*As to* (3) **Refd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 160.

622. *Add. Annotation:*—*Generally*, **Refd.** Parr *v.* A.-G., [1926] A. C. 239.

662. *Add. Annotation:*—**Refd.** Parr *v.* A.-G., [1926] A. C. 239.

666. *Add. Citation:*—132 L. T. 699.

694. *Add. Annotation:*—*As to* (8) **Refd.** Parr *v.* A.-G., [1926] A. C. 239.

755a. ——.]—*Re* BATEMAN (BARONESS), No. 107a, *ante.*

765. *Add. Annotation:*—**Consd.** *Re* Bateman, [1925] 2 K. B. 420.

PART V. SECT. 2, SUB-SECT. 4.

h 1. —— *Person entitled after death of successor before property paid over.*]—Where a share in a residuary estate was not paid to the residuary devisee during her lifetime but passed under her will, her death occurring eighteen months after that of testator:—*Held:* the Crown was entitled to succession duty thereon, although succession duty had been paid by the exors. under the first will on the residuary estate. *Re* LOWN ESTATE (B. C.), [1925] 2 W. W. R. 608.—**CAN.**

PART V. SECT. 2, SUB-SECT. 7.—B.

q 1. —— —— *Agreement for sale.*]—V., resident & domiciled in U.S.A., agreed by writing under seal to sell land owned by him in the province of Alberta, the purchaser going into possession. The purchase-money was to be paid, with interest, in U.S.A. At V.'s death in U.S.A., there was a balance owing him under the agreement:—*Held:* V., at his death, was the owner of property situated in Alberta or of an interest in the land, liable to duty in Alberta under Succession Duties Act, 1914 (c. 5), the question not being determined by the locality of the debt, but by the nature of the interest held by deceased in the Alberta land.—VAUGHN *v.* A.-G. FOR ALBERTA, [1924] 3 D. L. R. 467; 2 W. W. R. 821; 20 Alta. L. R. 424.—**CAN.**

PART V. SECT. 2, SUB-SECT. 7.—C.

a 1. —— *Specialty debt.*]—A mtge. debt due in New Brunswick at the time of the foreign creditor's death is property of the creditor's estate which may be liable to duty under Succession Duty Act, 1915.—ROYAL TRUST CO. *v.* PROVINCIAL SECRETARY, TREASURER OF NEW BRUNSWICK, [1923] 2 D. L. R. 49; [1925] S. C. R. 94; revsg. 52 N. B. R. 21.—**CAN.**

o 1. —— —— *Registered outside province.*]—A banking co., with a head office at Montreal in the Province of Quebec, had power by statute to maintain in any province a registry office at which alone shares held by residents in that province were to be registered & could validly be transferred. A. resided at Halifax in the Province of Nova Scotia, & died there, owning shares registered at an office of the co. at Halifax under the above statutory power. Under Succession Duty Act (Que.), 1909, art. 1376, duty was imposed upon "property actually situate within the province, whether the transmission takes place within or without the province":—*Held:* as the ownership of the shares could be effectively dealt with only in Nova Scotia, they were not property situate in Quebec, & the claim could not be maintained.—HIRAM HARD *v.* SMITH, [1925] A. C. 371; 94 L. J. P. C. 81; 132 L. T. 647; 41 T. L. R. 203.—**CAN.**

p. For the paragraph in the original volume substitute the following paragraph:—

—— *Owner not domiciled within province—Recognition of status of "wives."*]—If a person domiciled in a country whose laws permit polygamous marriages is married there to two wives, & dies while still domiciled there though temporarily residing in British Columbia, the status of the wives will be recognised by the cts. of British Columbia for the purpose of fixing the succession duty payable on property in British Columbia going under deceased's will to each of the wives.—YEW *v.* A.-G. FOR BRITISH COLUMBIA, [1924] 1 D. L. R. 1156; 1 W. W. R. 743; 33 B. C. R. 169; revsg. S. C. *sub nom. Re* LEE CHEONG, [1923] 1 W. W. R. 867.—**CAN.**

PART V. SECT. 3, SUB-SECT 1.

sg. *Declaration of trust several years before death.*]—Ten years before his death an owner of debentures executed a declaration of trust whereby he declared that he held them in trust for his children & deposited the debentures & the declaration in a bank where they remained until his death. He never received any benefit from the debentures, & there was no evidence of any scheme or reservation whereby he retained any beneficial interest. No part of the income was paid to the beneficiaries, but the trustee invested it in trust or placed it to the credit of a trust account in the same bank where it accumulated until he died:—*Held:* the fund was not liable to succession duties under Succession Duties Act, R. S. A. 1922 (c. 28).—COWAN *v.* A.-G., [1925] 2 D. L. R. 647; [1925] 1 W. W. R. 993; 21 Alta. L. R. 241; *revsd.*, [1926] 1 D. L. R. 29.—**CAN.**

PART V. SECT. 4.

ak. *Provincial duty—Assets in province forming part of larger estate—Deceased domiciled outside province.*]—Deceased, domiciled outside British Columbia, left personal property of $1,000,000 of which $10,000 was in British Columbia:—*Held:* under R. S. B. C., Acts 1911 (c. 217) & 1921 (c. 58), the duty payable on the net amount should be 1½ per cent. on the first $100,000, 2½ per cent. on the second $100,000 & 5 per cent. on the balance; of the sum thus ascertained the $10,000 within the province was charged with its proportion which was taken by the province.—*Re* SUCCESSION DUTY ACT, *Re* HECHT, [1924] 1 W. W. R. 1153; 33 B. C. R. 154.—**CAN.**

796. *Add. Annotation :*—**Consd.** A.-G. *v.* Bedford, [1926] 2 K. B. 184.

799a. ——.]—Where a person, who has succeeded to the life interest in leasehold property, subsequently receives the rack rents from the property when the leases fall in, the increased value of the succession for the purpose of succession duty is to be calculated by reference to the age of the successor at the expiration of the leases & to the value of the property as at that date, less the ground rents, & not to the value of the property when the succession first arose, less the ground rents.—A.-G. *v.* BEDFORD (DUKE), [1926] 2 K. B. 184; 95 L. J. K. B. 517; 135 L. T. 541; 42 T. L. R. 346; 70 Sol. Jo. 465.

853. *Add. Annotation :*—**Refd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

Part VI.—Probate Duty.

914. *Add. Annotations :*—**Apprvd.** Brassard *v.* Smith, [1925] A. C. 371. **Apld.** Baelz *v.* Public Trustee, [1926] Ch. 863; Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771. **Refd.** A.-G. *v.* Sudeley, [1896] 1 Q. B. 354; A.-G. *v.* New York Breweries Co., [1898] 1 Q. B. 205. **Mentd.** *In the Goods of* EWING (1881), 6 P. D. 19.

917. *Add. Annotations :* As to (1) **Apld.** Archer-Shee *v.* Baker (1926), 95 L. J. K. B. 929. **Refd.** Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 533. *Generally*, **Mentd.** Brassard *v.* Smith, [1925] A. C. 371.

PART V. SECT. 5, SUB-SECT. 1.

hi. —— ——.]—Although exors., when applying for ancillary letters patent in British Columbia, had placed a value on the estate in the province for the purpose of succession duty &, being accepted by the Crown, had given a bond to secure payment of the duty, they are not bound by such valuation & its acceptance by the Crown; but they have still the right to present a petition under Succession Duty Act, s. 43, to a judge of the Supreme Ct. of the province who has jurisdiction to determine what property of the estate is liable to duty & the amount due.—BLACKMAN *v.* R., [1924] 4 D. L. R. 123; [1924] S. C. R. 406.—CAN.

PART V. SECT. 6, SUB-SECT. 2.

si. *Postponement — Disputed claim against estate.*] Where deceased's estate is subject to a claim, not admitted, on notes made as surety for another, while it is right to postpone the final settlement of the exor.'s liability for succession duty as to the sum represented by such alleged indebtedness, an order dealing with the matter should postpone the date of payment to a time certain, & should contain a term directing payment of duty upon the sum should it be determined that the estate is not liable for the claim, & a further term that, if the estate is liable, the exor. should pay duty upon his claim against the principal debtor. *Re* SUCCESSION DUTY ACT & SPROULE, [1924] 2 W. W. R. 1087; 34 B. C. R. 110.—CAN.

PART V. SECT. 8, SUB-SECT. 3.

sm. *Hearing of summons under Succession Duty Act, R. S. B. C.* 1924 c. 214, s. 34 *Must be before judge who issued summons.*] *Re* CLAPHAM, MINISTER OF FINANCE *v.* HUMBER-BOONE (B. C.), [1925] 4 D. L. R. 325.—CAN.

ESTOPPEL.

Part I.—Nature and Classification.

10. *Add. Annotations :*—**Mentd.** The Jupiter (No 2), [1925] P. 69; Employers' Liability Assce. Corpn. v. Sedgwick, Collins, [1927] A. C. 95.

28. *Add. Annotation :*—**Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

Part II. Estoppel by Matter of Record.

52. *Add. Annotation :* **Mentd.** Freeborn v. Leeming, [1926] 1 K. B. 160.

63. *Add. Annotation :* **Consd.** Selby v. Atkins (1926), 135 L. T. 15.

96. *Add. Annotation :* **Distd.** Hoystead v. Taxation Comr., [1926] A. C. 155.

103a. ——.] Money-lenders Act, 1900 (c. 51), s. 1 (1), does not empower a judge to re-open a money-lending transaction where the money-lender has brought an action in respect of that transaction, & deft. borrower has consented to judgment, although the judgment may never have been drawn up & entered. The agreement to pay has become merged in the judgment, which is *res judicata* & not an agreement within the sect. COHEN v. IONESCO, [1926] 1 K. B. 110; 95 L. J. K. B. 100; 90 J. P. 18; 42 T. L. R. 41; 70 Sol. Jo. 138; *revsd.* on other grounds, [1926] 2 K. B. 1; 95 L. J. K. B. 467; 134 L. T. 690; 90 J. P. 74; 70 Sol. Jo. 386; 42 T. L. R. 294, C. A.

122. *Add. Annotation :* **Refd.** King v. Sunday Pictorial Newspapers (1920), Ltd. (1924), 133 L. T. 307.

204a. ——. **For deduction of costs—Not res judicata.**] Pltf., who had been negotiating for the purchase of a house, handed to deft., as his agent, the amount of the deposit & the balance of £490 payable to the vendor on completion & instructed deft. to pay this balance to the vendor when completion took place. Completion did not take place, & pltf. demanded the above balance from deft. & brought an action against him to recover it. The vendor claimed that pltf. was liable to him for £100 damages & directed deft. not to pay over that sum to pltf. Deft. thereupon issued an interpleader summons in respect of the £100, & the master directed an issue, & ordered that deft. should pay into ct. the £100 less his costs. On the trial of the issue the vendor's claim was dismissed. Pltf. then obtained leave to sign judgment for £390, for which deft. admitted liability. Pltf. now claimed the additional £100 in full without any deduction of deft.'s costs. Deft. contended that the master's order allowing deft. to deduct his costs was final :—*Held :* the master's order allowing the deduction of costs was not *res judicata*, but merely relieved deft. from paying the full £100 until the decision of the interpleader issue & the result of the action, & pltf. was entitled to recover the full £100.—ALLNUTT v. MILLS (1925), 42 T. L. R. 68.

214a. ——. A previous decision on a matter in dispute between parties does not create an estoppel unless (1) the decision was given by a competent tribunal, & (2) the matter was raised & controverted before that tribunal & was clearly & finally decided by it.—EASTWOOD & HOLT v. STUDER (1926), 31 Com. Cas. 251.

215. *Add. Annotation :* *As to* (2) **Refd.** Eastwood & Holt v. Studer (1926), 31 Com. Cas. 251.

222a. ——. In July & Aug. 1920, the shareholders of a co. carrying on the business of whiskey distilling passed resolutions for its voluntary winding up. With a view to selling the distillery as a going concern the liquidator continued distilling up to Mar. 31, 1921, but not after, & pending the sale of the business he sold the co.'s stocks of whiskey as opportunity offered. Such sales of whiskey extended over a period of more than two years. An assessment to income tax was made upon the co. for the year 1921-22 in respect of the profits of the sales of whiskey. The co. appealed against the assessment on the ground that the sales were made in the course of winding up & were not liable to income tax. The Special Commrs. held that the sales were made in the course of winding up & discharged the assessment. On appeal by the Crown :—*Held :* the sales were made in the course of winding up & were not liable to income tax.—*Re* KLINE, [1924] 1 D. L. R. 295; 56 N. S. R. 389.—**CAN.**

PART II. SECT. 2. SUB-SECT. 1. B. (a) ii.

8a. *Irregularities in procedure.*] The dismissal of prior motions for irregularities in procedure does not prevent an adjudication on a subsequent proper & regular motion.—*Re* DOTY & MARKS, [1925] 4 D. L. R. 710.—**CAN.**

8b. *Action on immoral contract.*] On the trial of an action the judge came to the conclusion that the evidence disclosed an illegal contract under which defts. were to receive part of the money obtained by pltf. while engaged in prostitution, & that the action was of an indecent character & unfit to be dealt with, & he dismissed it, the formal judgment stating that "this ct. does of its own motion & without adjudicating as between pltf. & defts. on the matters in dispute between them, order that this action be dismissed out of this ct., with costs".—*Held :* the order precluded pltf. from again suing in respect of any of the causes of action included in the statement of claim.—GUILBAULT v. BARNUM (1904), 34 C. L. T. 342, 10 R. C. R. 449.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a), iv.

104 i. —— ——.]—Where an order was made at chambers by consent of the parties, & an appeal was subsequently taken by the solr. for one of the parties that at the time of the making of the order he was under a misapprehension as to the effect of two judgments of the Supreme Ct.:—*Held :* the consent order operated as an estoppel.—*Re* KLINE, [1924] 1 D. L. R. 295; 56 N. S. R. 389.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (c).

204 i. ——.]—An interlocutory judgment, which definitely decides a question of law, & from which no appeal is taken, may be *res judicata* when the question is raised between the same parties, even in the same action.—DIAMOND v. WESTERN REALTY CO., [1924] 2 D. L. R. 922; [1924] S. C. R. 308.—**CAN.**

respect of the profits of its business on the footing that the liquidator was carrying on the trade in that year. This assessment was discharged by the Special Comrs. on appeal on the ground that an assessment on the co. for the preceding year had been discharged by the recorder on appeal to him from the determination of the Special Comrs., & that they were bound to follow his decision:—*Held:* the Special Comrs. were not bound by the decision of the recorder regarding the 1920–21 appeal to discharge the 1921–22 assessment.—EDWARDS *v.* "OLD BUSHMILLS" DISTILLERY CO., LTD. (IN LIQUIDATION) (1926), 10 Tax Cas. 285, H. L.

232. *Add. Annotation:*—**Reld.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

256a. ——.]—Applts.' mine was worked during the years 1919, 1920, & 1921 during two hundred & five days only owing to strikes & the low price obtainable for ore, though maintenance was continued during the whole period:—*Held:* the question of average annual value was not *res judicata* by a decision of the High Ct. of Australia between the parties as to the valuation for a previous year.—BROKEN HILL PROPRIETARY CO. *v.* BROKEN HILL MUNICIPAL COUNCIL, [1926] A. C. 91; 95 L. J. P. C. 33; 134 L. T. 335, P. C.

257. *Add. Annotation:*—**Distd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

265a. Decision that patent valid Subsequent action for infringement—Whether defendant estopped from disputing validity of patent.—In an action for infringement of a patent deft. denied infringement & pleaded that the patent was invalid by reason of lack of novelty & lack of subject-matter owing to common general knowledge & prior publication, want of utility, insufficiency & false suggestion in the specification, & he counterclaimed for revocation of the patent. In a previous action the patent had been attacked only on the ground of prior publication of two specifications, G. & V., & the issue of infringement had not been contested. In that action the patent had been held to be valid. It was contended by deft. that the ct. was bound by the prior decision only as to construction of the specification & not as to subject-matter, that the additional documents relied on showed features claimed in the specification not disclosed by G. or V., & that, owing to the issue of infringement not having been contested it had been unnecessary for the ct. to define the ambit of the claims:—*Held:* the ct. was not strictly bound by a prior decision as to anticipation, & it was open to deft. to prove anticipation by documents not before the ct. in the previous action.—HIGGINSON & ARUNDEL *v.* PYMAN, SAME *v.* SAME (1926), 43 R. P. C. 291, C. A.

276. *Add. Annotation:*—*As to* (3) **Apprvd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

294. *Add. Annotation:*—**Reld.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

296a. Admission.]—Under a will the annual income from an estate in Australia was divisible by the trustees between testator's daughters. The trustees objected to an assessment for the financial year 1918 1919 under Land Tax Assessment Act, 1910 1916, of Australia; they claimed under sect. 38 (7) of the Act a deduction of £5,000 in respect of the share of each daughter, & a case was stated for the opinion of the Full Ct. of the High Ct. upon the questions: (1) whether the shares of the joint owners, or of any & which of them, in the land were original shares within sect. 38; (2) how many deductions of £5,000 resp. should make. The Full Ct. answered these questions as follows: (1) the shares of the six children surviving at the date of the assessment; (2) six. Upon the assessment for 1919 1920 the comr. allowed only one deduction of £5,000, contending that the beneficiaries were not joint owners within the Act. Upon a case stated the Full Ct. upheld that view, & held that the comr. was not estopped by the previous decision:
Held: the comr. was estopped, since although in the previous litigation no express decision had been given whether the beneficiaries were joint owners, it being assumed & admitted that they were, the matter so admitted was fundamental to the decision then given.—HOYSTEAD *v.* TAXATION COMR., [1926] A. C. 155; 94 L. J. P. C. 79; 134 L. T. 354; 42 T. L. R. 207, P. C.

334. *Add. Annotation:* **Reld.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

405. *Add. Annotation.* **Reld.** Wilson *v.* Maple Mill (1925), 95 L. J. K. B. 606.

417. *Add. Annotation:* **Mentd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

432. *Add. Annotation:* **Reld.** A.-G. *v.* Denby, [1925] Ch. 596.

461. *Add. Annotation:* **Mentd.** Burrell *v.* Iseven (1926), 42 T. L. R. 107.

PART II. SECT. 3, SUB-SECT. 1.—B. (c).

225 i. *General rule.*]—Where the cause of action is different from what it was in the first action, the matter is not *res judicata.*—BRANIGAN *v.* SAHA, [1924] N. Z. L. R. 481.—N.Z.

PART II. SECT. 3, SUB-SECT. 1.—B. (d).

230 xvii. ——.]—Resp. claimed to deduct £1,000 in computing the profits for the year ending Mar. 31, 1921, & the recorder allowed the deduction claimed. The question came again before the Special Comrs. by way of an appeal from an assessment for 1922–23:—*Held:* the recorder's decision on the assessment for 1921–22 was binding, & the question was *res judicata.*—ALYMER *v.* MARAFFEY, [1925] N. 167; 10 Tax. Cas. 594.—IR.

PART II. SECT. 3, SUB-SECT. 1.—B. (g).

276 ii. ——.] An action was brought by a co. to remove two of its trustees for refusing to obey an order of the ct. made in a previous action directing them to join with the other trustee in assessing certain shares:—*Held:* deft. trustees were estopped by the judgment in the previous action from objecting to the status of directors who had ordered the assessment of the stock, as that was a question which should have been raised in that action.—FRASER RIVER MINING CO. *v.* GALLAGHER (1896), 5 B. C. R. 92.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—B. (a) ii.

465 i. *Lease—Unmerciful action for breach of covenant against subletting—Action for ejectment on conviction under licensing laws.*—Applt., lessee from resp. & licensee of an hotel, was convicted of an offence under Liquor Act, 1912 (N. S. W.). After the conviction, by a writ issued on the same day, resp. brought an action for ejectment against applt., claiming to be entitled to possession on the ground of a breach by applt. of his covenant not to assign or sublet without resp.'s leave, & judgment was entered for applt. By a writ issued about a year after the issue of the writ in the first action, resp. brought another action for ejectment against applt., claiming to be entitled to possession on the ground of the conviction:—*Held:* resp. was not debarred from relying on the conviction by reason of the fact that in the first action he might have asserted the right of re-entry which it gave him.—COHEN *v.* LAPIE (1924), 35 C. L. R. 247; 23 S. R. N. S. W. 291; 42 N. S. W. W. N. 7.—AUS.

480. *Add. Annotation :*—**Reld.** Debenham *v.* Perkins (1925), 133 L. T. 252.

492. *Add. Annotation :*—*As to* (1) **Reld.** Eastwood & Holt *v.* Studer (1926), 31 Com. Cas. 251.

528. *Add. Annotation :* — **Mentd.** Fishwick *v.* Gyani, [1925] 1 K. B. 617.

538. *Add. Annotations :*—*As to* (1) **Reld.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197 ; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023.

540. *Add. Annotation :*—**Reld.** *Re* Pennington & Owen, [1925] Ch. 825.

559. *Add. Annotation :*—*As to* (1) **Reld.** Debenham *v.* Perkins (1925), 133 L. T. 252.

573. *Add. Annotation :*—*As to* (2) **Reld.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., [1926] A. C. 761.

575a. —— —— —— **Power to set aside judgment.**]—A judgment in Penang against deft., described in the writ by the group of letters under which a money-lending firm there carries on business followed by the name of the firm's local representative, is a judgment against the local representative personally, whether he is a partner in, or merely an agent for, the firm. A subsequent suit for the same debt against the firm itself is barred. The ct., including the appellate ct., has no jurisdiction on motion to set aside the earlier judgment on the ground that pltf. was ignorant of its effect in law.—FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., [1926] A. C. 761 ; 135 L. T. 645 ; *sub nom.* FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., R. M. K. R. M. SOMASUNDARAM CHETTY *v.* M. R. M. V. L. SUPRAMANIAN CHETTY, 95 L. J. P. C. 197 ; 42 T. L. R. 686, P. C.

577. *Add. Annotations :*— **Consd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380. **Reld.** Anderson *v.* Equitable Assce. Soc. of United States (1926), 134 L. T. 557.

577a. —— **Action against partner—Subsequent action against firm.**]—FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., No. 575a, *ante.*

579. *Add. Annotations :*—*As to* (2) **Reld.** Debenham *v.* Perkins (1925), 133 L. T. 252 ; Bennett *v.* Whitehead, [1926] 2 K. B. 380 ; Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty *v.* M. R. M V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

580. *Add. Annotation :* — **Distd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

581a. —— —— —— **Judgment for debt incurred after separation.**]—Where an action for goods sold is brought against a wife on a bill containing a number of items, & judgment is recovered against her on all items purchased after a certain date, on the ground that since that date she has been acting as principal by reason of her having separated from her husband on that date, proceedings may subsequently be taken against the husband as agent for the items purchased prior to that date, since there are two distinct causes of action, & there has been no election by suing of the wife to judgment on the whole or part of one undivided debt.—DEBENHAM'S, LTD. *v.* PERKINS (1925), 133 L. T. 252, D. C.

593. *Add. Annotations :*—**Apld.** Dexters *v.* Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348. **Reld.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

610. *Add. Annotation :*—*Generally*, **Mentd.** R. *v.* Hertfordshire JJ., *Ex p.* Larsen, [1926] 1 K. B. 101.

PART II. SECT. 3, SUB-SECT. 2. B. (b).

496 lii. ——.]—WILLIAMS & SEARS *v.* RICHARDS (1918), 25 B. C. R. 19.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—B. (d).

507 vi. ——.]—Where a cause of action is shown & the claim is defended, tried & decided, or where the real issue between the parties, although not set out in the statement of claim, is tried & decided, it is not open to pltf., by a subsequent action relating to the same matters involved in the earlier proceedings, to put forward a claim or plea which he had an opportunity of putting forward in the earlier proceedings but which he either omitted or chose not to put forward at that time. Such claim or plea is *res judicata*.—WAHL *v.* NUGENT, [1924] 3 D. L. R. 679 ; [1924] 2 W. W. R. 1138 ; 18 Sask. L. R. 592 ; revsg., [1924] 2 D. L. R. 97 ; [1924] 1 W. W. R. 939.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—B. (f).

d i. *Award of damages for delay—Subsequent proceedings for compensation for further delay.*]—Where there was only one cause of action, & it was pltf.'s right to have his damages assessed once for all :—*Held :* the finding that pltf. could recover no damages after commencement of a subsequent action was binding upon both parties & was not, though erroneous, open to dispute. The judgment had not been appealed from & the question was *res judicata* between the parties.—MCINTOSH *v.* PARENT, [1924] 4 D. L. R. 420 ; 55 O. L. R. 552.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—C. (d) i.

a i. ——.]—Where it had not been established that in contracting to pay a commission, deft. had been acting as the agent of H. & that pltf. had elected to look to H. for payment ;—*Held :* a judgment by default recovered by pltf. against H. did not render pltf.'s claim against deft. *res judicata*, since the cause of action against deft., which it was admitted pltf. had before he sued H., did not exist against the latter & was not affected by the judgment.—WILLIAMS *v.* ROBBINS, [1921] 2 W. W. R. 185 ; 56 D. L. R. 691 ; 60 S. C. R. 664.—CAN.

PART II. SECT. 4, SUB-SECT. 3.

623 i. *General rule.*]—Lack of jurisdiction in the ct. deprives a judgment of any effect whether by estoppel or otherwise, even though the party alleged to be estopped sought the assistance of the ct. whose jurisdiction is impugned.—MCINTOSH *v.* PARENT, [1924] 4 D. L. R. 420 ; 55 O. L. R. 552.—CAN.

PART II. SECT. 5, SUB-SECT. 1.

638 x. ——.]—JOURNEAY *v.* RAILWAY PASSENGERS ASSURANCE CO., [1924] 1 D. L. R. 506 ; 50 N. B. R. 501.—CAN.

Part III.—Estoppel Quasi of Record.

677. ***Add. Annotation :*—Mentd.** Saklat *v.* Bella (1925), 42 T. L. R. 25.

686. ***Add. Annotation :*—Distd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

687. *Add. Annotation :* **Reld.** York Glass Co. *v.* Jubb (1925), 134 L. T. 30.

692. *Add. Annotation :* **—Mentd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

Part V.—Estoppel by Deed.

776. ***Add. Annotation :*—*As to* (1) Reld.** Parr *v.* A.-G., [1926] A. C. 239.

916. ***Add. Citation :*—94 L. J. Ch. 150.**

Add. Annotation :— **Mentd.** Birkdale District Electric Supply Co. *v.* Southport Corpn, [1926] A. C. 355.

Part VI.—Estoppel in Pais.

1021. ***Add. Annotations :*—*As to* (2) Reld.** Jones *v.* Waring & Gillow, [1926] A. C. 670. *Generally,* **Reld.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167.

1038. ***Add. Citation :*—132 L. T. 22.**

1040. *Add. Annotation :*— **Apld.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

1065. In the twelfth line on p. 297, after the word "agreement," insert "defts. pleaded that the agreement."

1066. *Add. Annotation :*— **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

1111. ***Add. Annotation :*—Reld.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1147. ***Add. Annotation :*—Reld.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

1148a. ——.]—Defts., warehousemen & wharfingers, held 600 quarters of maize belonging to A., who sold 200 quarters thereof to W. & Co., who sold them to pltfs., giving to the latter a delivery note, which they lodged with defts. Defts. did not acknowledge it or object to it, but some days later, no weighing out or appropriation of the 200 quarters having taken place, A. stopped delivery. It was contended that on the sale to W. & Co. the latter became tenants in common with A. of the 600 quarters, with the right in W. & Co. to assign their interest therein to pltfs., although no appropriation of the 200 quarters had taken place :—*Held :* (1) pltfs. had no claim to the maize ; (2) defts. & A. were not estopped from denying that pltfs. were the owners of the 200 quarters of maize.

No doubt property can be acquired by estoppel. In one aspect estoppel does not create a title but merely enables pltf. to rely upon the doctrine & to treat the property as if it had been transferred (SANKEY, J.).—LAURIE & MOREWOOD *v.* DUDIN (JOHN) & SONS, [1925] 2 K. B. 383 ; 94 L. J. K. B. 928 ; 30 Com. Cas. 280 ; *affd.*, [1926] 1 K. B. 223 ; 95 L. J. K. B. 191 ; 134 L. T. 309 ; 42 T. L. R. 149 ; 31 Com. Cas. 96, C. A.

Annotation :— *As to* (1) **Reld.** *Re* Wait, [1926] Ch. 962.

1154. ***Add. Annotation :*— Mentd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

PART VI. SECT. 2, SUB-SECT. 1.—A.

1032 i. *How estoppel arises.*]—Estoppel arises where a man is precluded from denying the truth *of* anything which he has represented to be a fact, though it is not a fact.—*Re* MONTGOMERY *v.* DIAMOND. DIAMOND *v.* MONTGOMERY, [1925] 4 D. L. R. 736.—CAN.

1040 i. *Where all parties know the truth—No representation.*]—A tenant after the expiry of his original lease received from his landlord notice to quit at the end of the following month. In reply, he wrote a letter which contained (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment the tenant contended that his original lease being for manufacturing purposes he had a tenancy from year to year, & was entitled to six months' notice :—*Held :* he was not estopped from so contending as the facts affecting the tenancy were within the knowledge of both parties.—JACKS & Co. *v.* JOONAB MAHOMED (1923), I. L. R. 48 Bom. 38.—IND.

PART VI. SECT. 2, SUB-SECT. 1.—B. (a).

1041 xiv. ——.]—In 1894 applt. granted a lease of land "from year to year" to respe. In 1903 respe. wished to build a house on the land & applt. wrote that the lease was a permanent one, though the rent was liable to enhancement. Respe. built a house & applt. received a bonus in respect of it. In 1916 applt. sought to eject respe. :—*Held :* whether the lease was a permanent one under the agreement, applt.'s statement in the letter that it was so was a representation of fact & not an expression of opinion, & he was estopped from denying it.—FORBES *v.* RALLI (1925), L. R. 52 Ind. App. 178.—IND.

1044 i. —— ——.]—In order to found an estoppel a representation must be of an existing fact, not of a mere intention, & a promise which is a mere statement of an intention to do something in the future is not sufficient.—HAZANBOFF *v.* BROUSSEAUX, [1924] 2 D. L. R. 1170 ; 2 W. W. R. 509.—CAN.

PART VI. SECT. 2, SUB-SECT. 1.—B. (g) ii.

1096 xviii. ——.]—If a person sets up estoppel he must show that he has altered his position to his prejudice owing to the conduct of the other party whom he claims is estopped.—ST. JOHN COUNTY HOSPITAL *v.* PECK, [1924] 2 D. L. R. 163 ; 51 N. B. R. 324.—CAN.

1096 xix. ——.]—A tenant in reply to a month's notice to quit wrote a letter containing (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment, he contended that he was entitled to six months' notice :—*Held :* he was not estopped from so contending, as the landlord having already given notice to quit had not shown that he had altered his position by reason of the admission.—JACKS & Co. *v.* JOONAB MAHOMED (1923), I. L. R. 48 Bom. 38.—IND.

1096 xx. ——.]—In order to create an estoppel *in pais* it must be shown that he who desires to take advantage of it has acted upon the untrue representation as true, not knowing it to be untrue, thereby altering his position to his prejudice.—HUFFMAN *v.* ROSS (1925), 57 O. L. R. 329.—CAN.

1213. *Add. Annotation :—As to* (2) **Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

1219. *Add. Annotation :—As to* (1) **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

1247. *Add. Citations :*—94 L. J. P. C. 93; 132 L. T. 511.

1257. *Add. Annotations :*—**Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52. **Mentd.** *Re* Ellis, [1925] Ch. 564.

1259. *Add. Citation :*—132 L. T. 99.
Add. Annotations :—**Mentd.** The Jupiter (No. 2), [1925] P. 69; Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95.

1265. *Add. Annotation :*—**Refd.** A.-G. *v.* Denby. [1925] Ch. 596.

1294. *Add. Annotation :* - **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1311. *Add. Annotation :* - **Mentd.** Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

1318a. —— **Payment of rent not due.**]—The predecessors in title of defts. were owners in fee simple of land including both the surface & the strata below the surface. They conveyed the land to pltfs.' predecessors by a deed which contained an exception & reservation of all mines & veins of coal in or under the land. Defts. & their predecessors worked the coal mines under the land & made an underground road which was not confined to the seams of coal, but was cut also through the adjacent strata. Along this road they carried coal obtained from mines beyond the limits of the land conveyed to pltfs.' predecessors. Defts. & their predecessors had for some years paid rent to pltfs. in the belief that they were bound to do so under a licence from pltfs. :—*Held :* (1) by virtue of the exception, the property in the strata below the surface remained in defts. sufficiently to entitle them to construct roads therein & use them in any way they pleased; (2) the payment being voluntary & made under a supposed legal liability created in law no obligation at all, & defts. were not thereby estopped from setting up their title under the conveyance.—BATTEN POOLL *v.* KENNEDY, [1907] 1 Ch. 256; 76 L. J. Ch. 162.

1319a. **Objections to account stated not pressed.**]—BURROUGH'S ADDING MACHINE, LTD. *v.* ASPINALL (1925), 41 T. L. R. 276, C. A.

1326. *Add. Annotation :*—**Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

1380. *Add. Annotation :*—**Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

1395. *Add. Annotation :—As to* (2) **Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

1435a. ——.]—LAURIE & MOREWOOD *v.* DUDIN (JOHN) & SONS, No. 1148a, *ante.*

1542. *Add. Annotation :*—**Mentd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

1550. *Add. Annotation :*—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

1557. *Add. Annotation :*—**Refd.** Macaura *v.* Northern Assce., [1925] A. C. 619.

PART VI. SECT. 3, SUB-SECT. 3. - A.

1221 i. *General rule.*]— DEMINGS *v.* BEDELL, [1925] 3 D. L. R. 1063.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.— B.

a i. *Acceptance of credit from unauthorised agent.*]— A co., knowing a vendor of goods was giving it credit in a case where the person buying on it behalf has no proper authority so to do, is estopped afterwards from disputing liability on the ground of want of authority.—GREAT WEST SADDLERY CO. *v.* CANADIAN INGOT IRON CO., [1924] 4 D. L. R. 881.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.— C. (a).

1260 iv. - - -.] Estoppel by acquiescence connotes that the person estopped has represented to the person who is infringing his right that he is not entitled to complain, & that the other party relying upon this representation has altered his position to his detriment.—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), 1. L. R. 52 Calc. 748.—**IND.**

1260 v. - - - -.]— In order that the protection of the equitable doctrine of acquiescence may be successfully claimed, the following circumstances must subsist. The party claiming the benefit of the doctrine must have made a mistake as to his legal rights & must have expended some money or done some act on the faith of his mistaken belief; & the possessor of the legal right must have known of the existence of his own right which is inconsistent with the right claimed by the other party, he must have known of the other party's mistaken belief in his own rights, & he must have encouraged the other party in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right.—JAI NARAIN *v.* JAFAR BEG (1926), 1. L. R. 48 All. 353.—**IND.**

1268 ii. - - - *Or ultra vires.*]—Acquiescence cannot rehabilitate or render valid a transaction which is *ultra vires* or illegal.—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), 1. L. R. 53 Calc. 748.—**IND.**

PART VI. SECT. 3, SUB-SECT. 3.— C. (b) i.

1270 vi. - - - -.]— Where under a contract between pltfs., U.S. citizens, & defts., a Canadian co., payments had been made in different currencies at different times :—*Held :* as under the contract payments should be in Canadian currency, payments made in U.S. currency could not operate as an estoppel, as they were made under misapprehension of rights.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.— C. (c).

am. *Assent to sale of goods—Acquiescence in condition of goods.*]— In an action to recover for work & labour in pressing a quantity of straw, evidence showed that deft. was of opinion that the straw was not in a fit condition to be pressed, & that he only consented to have the work done on pltf. offering to buy the straw, & that pltf. subsequently made a sale of the straw which was delivered at his request :—*Held :* pltf. was precluded from setting up the unmerchantable condition of the straw in answer to deft.'s counterclaim for the price agreed to be paid.—PEPPARD *v.* WOOD, PEPPARD *v.* CAMERON (1924), 57 N. S. R. 222.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.— E. (a).

an. *Application of doctrine—Guarantee induced by fraud—Delay in repudiation.*]— A. was induced to guarantee a debt by fraud of debtor. On learning of the fraud from the creditor he did not repudiate the guarantee :—*Held :* it was afterwards too late to set a defence based on the fraud.—MANTLE LAMP CO. OF AMERICA *v.* NIXON, [1924] 3 D. L. R. 1073.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.— E. (b) ii.

ao. *Delay in taking security—Creditor estopped from relying on agreement by debtor to give security.*]—*Re* MCINTYRE, TRUSTEE *v.* CANADA METAL CO., [1925] 2 D. L. R. 889; 5 C. B. R. 629.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.— G. (b).

ap. *Nationality of party.*]—Where pltf. was ignorant when he made a contract that deft. was a person of enemy origin & that under War Legislation & Statute Law Amendment Act, 1918, s. 6, the contract was illegal :—*Held :* in an action for breach of contract, deft. would be estopped from alleging that the contract was void on account of his enemy origin since the deft. well knew that fact.—BRANIGAN *v.* SARA, [1924] N. Z. L. R. 481.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.— H. (a.)

1438 i. *A form of acquiescence.*]—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), 1. L. R. 52 Calc. 748.—**IND.**

PART VI. SECT. 3, SUB-SECT. 4.—A.

1596 x. ——.]—Deft. wished to purchase a piece of land & approached S. for a loan of the amount which he required to make up the price. S.,

1601. ***Add. Annotation*** **:—Mentd. Ouellette v. Canadian Pacific Ry., [1925] A. C. 569.**

1604. ***Add. Annotations*** **:—Reld. Australian Bank of Commerce v. Perel, [1926] A. C. 737; Jones v. Waring & Gillow, [1926] A. C. 670.**

without the knowledge of deft., obtained from pltf. the money which deft. needed, & presented a mtge. in pltf.'s favour to deft. to sign. Deft. never read the mtge., but understood from the representations of S. that the writing which he signed was merely an acknowledgment of the receipt of the money from S. who, he thought, was advancing it:—*Held:* the mtge. was not the deed of deft. & he was not estopped from alleging that it was not. —COOIL v. CLARKSON, [1925] 2 D. L. R. 493; [1925] 1 W. W. R. 1094, 35 B. C. R. 308.—CAN.

1605 vi. ———.]—Where taxes were paid to a municipal employee who had no authority to receive them:—*Held:* the fact that the municipality kept its tax-receipt books, cashier's stamp & tax roll in such a manner that the employee was enabled to get possession of the books, etc., & give a receipt for the taxes, did not estop the municipality from showing his lack of authority, even if it amounted to negligence, since such negligence did not occur in the transaction itself & was not the proximate cause of the taxpayer's payment of his taxes to the employee.—RICHES v. CITY OF MOOSE JAW, [1925] 3 D. L. R. 1176; [1925] 3 W. W. R. 127.—CAN.

EXECUTION.

Part II.—Matters Common to all Modes of Execution.

61. *Add. Annotation :*—**Reld.** Kayley *v.* Hothersall, [1925] 1 K. B. 607.

63. *Add. Citation :*—[1925] 1 K. B. 607.

88a. **Against co-surety—Judgment debt paid by surety.**]—Where a surety has paid a judgment debt & has obtained an assignment of the judgment under Mercantile Law Amendment Act, 1856 (c. 97), s. 5, he must obtain the leave of the ct. under R. S. C., Ord. 42, r. 23, before he can issue execution against his co-surety to enforce contribution to the judgment debt.—KAYLEY *v.* HOTHERSALL, [1925] 1 K. B. 607; 94 L. J. K. B. 348; 132 L. T. 468; 69 Sol. Jo. 310, C. A.

146a. ——— **Omission to claim costs.**]—Where, at the trial, the judge grants a certificate for speedy execution under 1 Will. 4, c. 7, s. 2, pltf. should issue one writ of execution for the amount of the damages & costs. Where deft. had been arrested under a *ca. sa.* for the damages only, & had paid them, & been discharged out of custody, the ct. refused to allow pltf. to issue another *ca. sa.* for the costs.—SMITH *v.* DICKINSON (1844), 5 Q. B. 602; Dav. & Mer. 468; 13 L. J. Q. B. 151; 2 L. T. O. S. 368; 8 Jur. 123; 114 E. R. 1376.

Part III.—Particular Forms of Execution.

835. For "..... & finally" read "..... **Not finally.**"

954. *Add. Annotations :* As *to* (3) **Reld.** British American Continental Bank *v.* British Bank for Foreign Trade, [1920] 1 K. B. 328. *Generally*, **Mentd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

PART II. SECT. 3.

sq. *Judgment on promissory note taken for "cash" payment on agreement for sale of land—Issue of execution on note before sale of land—Valid.*]—CORTON *v.* DEMPSTER (Alta.), [1925] 1 W. W. R. 951. **CAN.**

PART II. SECT. 15, SUB-SECT. 5.

sl. *Protection of successful party's interests.*]—Upon motion by defts. for stay pending appeal:—*Held:* the ct. had inherent jurisdiction to stay proceedings, but a stay should not be granted unless defts. could devise a scheme by which pltfs. would be adequately protected.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO. (1924), 55 O. L. R. 127.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) iv.

sv. *Purchaser's interest in land under agreement to buy.*]—A purchaser's interest in land which he has agreed to buy is not bound by an execution against him, unless he has become the registered owner.—HUDSON'S BAY CO. *v.* BULLOCK FARMS, LTD., [1923] 2 W. W. R. 359. **CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) vii.

s l. ——— *Interest in shares.*]—SAYRE *v.* GILROY, [1923] 1 W. W. R. 992.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) x.

s l. ——— *Paid to debtor's solicitor—For payment of costs of action.*]—*Held:* not liable to attachment.—*Re* FORT FRANCES PULP & PAPER CO. *v.* TELEGRAM PRINTING CO., PHILLIPPS & SCARTH *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 4 D. L. R. 204.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xvi.

t l. ———.]—When debtor is in actual residence on certain property belonging to him, such property is *prima facie* exempt under Exemptions Act, R. S. S., 1920, & the fact that the wife of debtor happens to own a house that had been previously used as the family home cannot deprive debtor of the right to claim the exemption.—SALTER & ARNOLD, LTD. *v.* DILLMAN, [1924] 2 W. W. R. 1225.—**CAN.**

q l. ——— *Exemptions Act, Alta.—Not applicable against Crown.*]—R. *v.* O'BRIEN, [1924] 1 D. L. R. 222; 1 W. W. R. 104.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) i.

710 (ll. ———.]—*Re* BANK OF MONTREAL *v.* TANNAS; TANNAS *v.* BANK OF MONTREAL, [1925] 3 D. L. R. 1079.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xvi.

s l. ——— *Assets in futuro.*]—An execution on a judgment of assets *in futuro* is invalid if issued without leave after application made under r. 451.—*Re* SMITH'S ESTATE. CANADIAN GUARANTEE TRUST CO. *v.* DELIBLE, [1924] 4 D. L. R. 1258; 3 W. W. R. 515.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—H. (a).

sw. *Setting aside sale—After confirmation.*]—In the absence of fraud or collusion, a sale in execution, which has once been confirmed, cannot be set aside because the decree under which it was held was at first incorrectly drawn up, & has since been amended.—AGHA HUSAIN *v.* QASIM ALI (1925), I. L. R. 48 All. 94.—**IND.**

PART III. SECT. 1, SUB-SECT. 5.—A.

a l. ——— *Right of sheriff to inquire into claim.*]—Where a landlord makes a claim for rent to be deducted out of the proceeds of an execution, the sheriff is entitled to a reasonable time to inquire into the demand; & where the tenant had denied that any rent was due, & the landlord refused to allow the sheriff time to make the inquiry, the ct. refused the cost of an application to compel the sheriff to pay the rent.—NOWLIN *v.* ANDERSON (1849), 6 N. B. R. (1 All.) 497.—**CAN.**

PART III. SECT. 1, SUB-SECT. 9.

sx. *Creditors' Relief Act, R. S. A., 1922 (c 88), s. 30, not applicable.*]—TERMINAL GRAIN CO. *v.* SODERBERG, [1925] 1 D. L. R. 313; [1925] 1 W. W. R. 9.—**CAN.**

PART III. SECT. 1, SUB-SECT. 10.—A.

sz. *Indorsement of writ.*]—It is a condition precedent to an action under Cos. Act, s. 55, that an execution against a co. is returned unsatisfied in whole or in part; & to enable the action to be brought, even where the co. has become bkpt., a return is not sufficient unless it is indorsed on the writ as required by r. 629, & a certificate is filed as required by r. 632.—CROWDER *v.* COLEMAN, [1924] 1 D. L. R. 849; 1 W. W. R. 374; 20 Alta. L. R. 1.—**CAN.**

PART III. SECT. 1, SUB-SECT. 11.

d l. ——— *Conflicting claims.*]—The ct. will not grant a *rule nisi* to compel a sheriff to pay over money collected under execution where there are conflicting claims to the fund, but will leave the parties to their remedy by action.—SCOTT *v.* ANGUS (1854), 2 N. S. R. (James) 183.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.—C.

k l. *Interest of unpaid vendor.*]—The interest of an unpaid vendor of land made exigible under an execution against him by Land Titles Act, R. S. A., 1922, s. 112, includes the legal estate as affected by the contract together with the rights of the vendor under the contract; & it is that estate & those rights which are bound by the writ & may be sold by the sheriff.—

1231a. —— —— **What amounts to.**]—Where, under process of execution from a county ct., some goods of a stranger had been taken, the mere fact that the execution creditor told the bailiff that goods would be claimed by a third party, but that such claim was not to be regarded:—*Held:* not to amount to a direction to take all the goods, or any which were not liable to be seized, so as to make the execution creditor personally liable.—CRONSHAW *v.* CHAPMAN (1862), 7 H. & N. 911; 31 L. J. Ex. 277; 6 L. T. 54; 10 W. R. 323; 158 E. R. 738.

1243. *Add. Annotation:*—**Reld.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1358. *Add. Annotation:*—**Mentd.** British-American Tobacco Co. *v.* Jones (1925), 134 L. T. 405.

1524. *Add. Annotation:*—**Mentd.** *Re* Quintin Dick, Cloncurry *v.* Fenton, [1926] Ch. 902.

1704. *Add. Annotation:*—**Folld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95.

1900. *Add. Annotation:*—**Mentd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

2046. In the cross-reference before this case, for "METROPOLIS" read "MAYOR'S & CITY OF LONDON COURT."

2108. *Add. Annotation:*—**Expld.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

2169. *Add. Annotation:*—**Reld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95.

2170. *Add. Annotation:*—**Folld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95.

2170a. —— —— ——.]—Pltfs. had brought an

Part V.—Analogous Proceedings.

MORTON & COWELL *v.* HOFFERT, [1924] 3 D. L. R. 16; 2 W. W. R. 529.—CAN.

PART III. SECT. 2, SUB-SECT. 7.

e i. —— *Judgment for alimony.*]—Where, at the time a judgment for alimony is registered against the husband's interest in certain land held by him under an uncompleted agreement for sale, he is in a position to compel specific performance of the agreement, the judgment is a charge on the husband's interest; & if, subsequently to the registration of the judgment, & with knowledge of it, the vendor accepts from the husband a quit-claim deed of all of the latter's estate & interest in the land, the vendor holds that interest subject to the charge until the charge is extinguished.—BRIGGS *v.* CARSON, [1924] 1 D. L. R. 774; [1924] 3 W. W. R. 465; 19 Sask. L. R. 59.—CAN.

a (p. 571) i. ——.]—As between the execution creditors of a vendor, & the assignee of his interest under an agreement of sale, whose assignment was acquired subsequently to registration of the executions:—*Held:* the instalment of purchase-money paid into ct. should belong to the execution creditors, but as the money had been obtained under execution, it should be treated as money realised from the sale of the vendor's interest, & being in the sheriff's hands should be subject to distribution under Creditors' Relief Act.—MORTON & COWELL *v.* HOFFERT, [1924] 3 D. L. R. 16; 2 W. W. R. 529.—CAN.

PART III. SECT. 2, SUB-SECT. 10.—A.

aa. *Confirmation of sale—Right of appeal.*]—A local master, in confirming a sale of land sold under execution, is not acting in a matter or an action in ct. but as *persona designata* under Land Titles Act, R. S. S., 1920, c. 57, & the only appeal is to the Ct. of Appeal.—ETHIER *v.* NOLLE, [1924] 1 W. W. R. 493.—CAN.

ab. *Distribution of proceeds of sale.*]—The proceeds of a sale of land under execution when paid over to the registrar of the ct. are distributable by him as if they were money in the hands of the sheriff distributable under Creditors' Relief Act. An appeal lies to a judge from the registrar's scheme of distribution.—CALDWELL *v.* GEORGE, [1925] 2 D. L. R. 229; [1925] 1 W. W. R. 579; 35 B. C. R. 134. CAN.

PART V. SECT. 1, SUB-SECT. 3. A.

m (p. 624). *Reasd.*, [1924] 1 D. L. R. 1154; 1 W. W. R. 767; 18 Sask. L. R. 158.

m (p. 624) i. —— ——.] The balance of purchase-money owing under an agreement of sale of land, though all overdue, & assuming that the vendor is able & willing to convey & that the contract contains the usual provisions as to transfer, free from encumbrances on payment of the purchase-money, but where no transfer has been given or tendered, is not attachable by garnishment, as the debt is not a perfected & unconditional one.—REED *v.* RENTON & PETTIGREW, [1924] 2 W. W. R. 223.—CAN.

m (p. 624) ii. *Balance of payment to mortgagee under policy taken out by mortgagor.*]—A hail-insurance policy taken out by a mtgor. on a crop growing on the mortgaged land provided that all loss thereunder should be payable to the mtgees., "as their interests may appear" & that the policy was held as collateral security to the mtge. On a loss occurring, the amount thereof was paid by the insurance co. to the mtgees., who applied part of it in payment of arrears then due on the mtge. & entered the surplus in their books "to the credit of the mtge. account." On being served with a garnishee order the mtgees. paid the amount claimed into ct.:—*Held:* the money in ct. should be paid to the garnishing creditor.—ROYAL BANK OF CANADA *v.* KENWARD, [1925] 4 D. L. R. 995; [1925] 3 W. W. R. 549.—CAN.

PART V. SECT. 1, SUB-SECT. 3.—B.

ad. *Claim by dismissed servant.*]—Where the debt alleged to be due from the garnishee to deft. was based on an oral agreement of service for one year, & deft. had been dismissed by the garnishee & had retained a solr., who wrote stating that deft. intended to hold the garnishee to his contract & threatening legal proceedings, but no writ had been issued at the time of the service of the garnishee summons:—*Held:* there was no debt due or accruing due from the garnishee to deft.—MASON *v.* McLEOD & FORTIN, [1925] 1 D. L. R. 752; [1925] 1 W. W. R. 165; 19 Sask. L. R. 271.—CAN.

PART V. SECT. 1, SUB-SECT. 3.—J.

f (p. 634) i. —— *Army surgeon.*]—The pay of an assistant-surgeon, attached to a British regiment serving in India, is not liable to attachment in execution of a decree of a civil ct.—BROWNE *v.* PEARCE, (1925), I. L. R. 48 All 73. IND.

PART V. SECT. 1, SUB-SECT. 4.

s. *Reasd.*, 17 Alta. L. R. 109.

d (p. 637) i. ——.]—In an affidavit in support of a garnishee summons, deponent must swear positively to the indebtedness & the amount thereof, & if his affirmation as to the amount is upon information & belief only his previous positiveness as to the indebtedness is thereby qualified; & as to a judgment debt the affidavit must show not only the existing indebtedness, but also the amount for which judgment was recovered.—FROST *v.* ROGERS & VERRIER, [1924] 2 W. W. R. 422.—CAN.

d (p. 637) ii. ——.]—An affidavit in support of a garnishee summons with respect to a judgment debt, need not state the original amount of the judgment, but only the amount still due thereon.—PORTER *v.* SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513; [1926] 2 W. W. R. 293; 19 Sask. L. R. 497.—CAN.

d (p. 637) iii. —— ——.]—An affidavit for a garnishee order is not sufficient, unless it states that it is founded upon information & belief, or that deponent has knowledge of the facts.—ILLECILLEWAET ATHLETIC CLUB *v.* BURICK, [1925] 3 W. W. R. 368.—CAN.

h (p. 637) i. —— *Time for securing.*]—The fact that the affidavit in support of a garnishee summons was sworn before the action was begun, although on the same day on which the statement of claim was issued, is ground for setting the garnishee summons aside.—McFARLAND *v.* SEYMOUR, [1925] 4 D. L. R. 944; [1925] 3 W. W. R. 666; *revsg.*, [1925] 4 D. L. R. 325; [1925] 3 W. W. R. 256.—CAN.

PART V. SECT. 1, SUB-SECT. 5.—B.

q i. ——.]—Service of a garnishee summons set aside, the copy served not having been a true copy.—LIVERMONT *v.* CAPITAL JOURNEYS, LTD., [1925] 3 W. W. R. 719.—CAN.

action & had signed a judgment against a Russian co. in default of appearance. Service of the writ had been effected by leaving a true copy of the writ of summons with one C., who was the person authorised by registration in England to accept service on behalf of deft. co. under Companies (Consolidation) Act, 1908 (c. 69), s. 274. The co. had been liquidated in Russia but this liquidation took no account of debts due to the co. by English debtors or by the co. to English creditors, & an order had since been made to wind up the co. in England. The English liquidator decided not to attack the judgment. C. had endeavoured without success to have his name removed from the register:—*Held:* the judgment creditors were entitled to a garnishee order attaching money due to the Russian co. from a debtor of that co. in this country.—SEDGWICK COLLINS & CO. v. ROSSIA INSURANCE CO. OF PETROGRAD, [1920] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808: 41 T. L. R. 663, C. A.; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. v. SEDGWICK, COLLINS & CO., [1927] A. C. 95, H. L.

2350. After the word "*Held*" add "(ERLE, J., *diss.*)"

Annotations:—For the annotations in the original volume substitute as follows:—

Annotations:—**Dbtd.** Beavan *v.* Oxford (1856), 6 De G. M. & G. 507. I prefer the opinion of ERLE, J., to that of the other three judges (TURNER, L.J.). **N.F.** Kinderley *v.* Jervis (1856), 22 Beav. 1; Scott *v.* Hastings (1858), 4 K. & J. 633. **Consd.** Nicholls *v.* Rosewarne (1859), 6 C. B. N. S. 480. **N.F.** Benham *v.* Keane (1861), 1 John. & H. 685. **Dbtd.** Pickering *v.* Ilfracombe Ry. (1868), L. R. 3 C. P. 235; Robinson *v.* Nesbitt (1868), L. R. 3 C. P. 264. The opinion of the majority of the ct. in that case is no longer law (BOVILL, C.J.). **N.F.** Gill *v.* Continental Union Gas Co. (1873), L. R. 7 Exch. 332. **Dbtd.** Punchard *v.* Tomkins (1882), 31 W. R. 286. The case of *Watts* v. *Porter* is itself unsound law, but ERLE, J.'s construction of Judgments Act, 1838 (c. 110), is now held to be the law (CHITTY, J.). **N.F.** *Re* General Horticultural Co., *Exp.* Whitehouse (1886), 32 Ch. D. 512: *Re* Leavesley, [1891] 2 Ch. 1; Vacuum Oil Co. *v.* Ellis, [1914] 1 K. B. 693. **Refd.** Hirsch *v.* Coates (1856), 18 C. B. 757; Croft *v.* Lumley (1858), 6 H. L. Cas. 672; Baker *v.* Tynte (1860), 2 E. & E. 897. **Mentd.** Whistler *v.* Forster (1863), 14 C. B. N. S. 248.

2526. *Add. Annotation*:—**Refd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955.

PART V. SECT. 1, SUB-SECT. 6. C. (b).

s1. *Debt not liable to be garnisheed — Indian Act, R. S. C.* 1906, *ss.* 99, 102.]—ARMSTRONG GROWERS' ASSOCS. *v.* HARRIS, [1924] 1 D. L. R. 1043; 1 W. W. R. 729; 33 B. C. R. 285.—**CAN.**

s1. *Error in form.*]—ARMSTRONG GROWERS' ASSOCS. *v.* HARRIS, [1924] 1 D. L. R. 1043; 1 W. W. R. 729; 33 B. C. R. 285.—**CAN.**

s1. *Who may apply.*]—A "person claiming to be interested in the money attached," within Attachment of Debts Act, R. S. S. 1920 (c. 59), s. 7, is some person, other than pltf., deft. or garnishee, who claims some interest in the money attached by the garnishee summons. POSTUS *v.* SMITH & CONSTABLE, [1925] 3 D. L. R. 513; [1925] 2 W. W. R. 293; 19 Sask. L. R. 97.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5. A.

2289 l. *Fund in court — Paid under garnishee proceedings.*]—PRATT *v.* HITCHCOCK, JONAH *v.* HITCHCOCK, [1925] 3 D. L. R. 1142.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2. D.

2393 l. *Right of assignee to fund.*]—*Re* DAVIDSON & SMITH. *Ex p.* LONDON GUARANTEE & ACCIDENT CO., [1925] 3 D. L. R. 433.—**CAN.**

PART V. SECT. 5. SUB-SECT. 1.

2448 l. *Not execution but equitable relief.*] Equitable execution is a means of freeing exigible assets from impediments in the way of execution & reaching them when such impediments prevent them from being taken in the ordinary course; it will not be awarded unless it is reasonably clear that benefit will be derived from the appointment of a receiver.—STRANG *v.* BRAT, [1923] 3 D. L. R. 1141, 52 O. L. R. 205.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

s1. *Effect of County Courts Act, R. S. M.*, 1913, *s.* 67.]—Under the above sect. county ct. judges in Manitoba have no jurisdiction to make an order for the appointment of a receiver if the order is, in effect, an injunction against deft. restraining him from receiving the moneys therein referred to.—MCFARLANE *v.* FRANKLIN, [1924] 3 D. L. R. 605; 2 W. W. R. 1036; 31 Man. L. R. 293.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—A. (a).

2453 v. ——.]—A pltf. who holds a judgment on which he is entitled to issue a writ of execution against goods only, & who seeks the appointment of a receiver to take possession of the goods, must show (*inter alia*) that he is entitled to have the goods seized, but that it is impossible owing to some impediment in law of deft.'s interest.—LANGSTAFF *v.* SQUIRRELL, [1924] 2 D. L. R. 930; 1 W. W. R. 1265; 18 Sask. L. R. 250.—**CAN.**

2453 vi. ——.]—The appointment of a receiver by way of equitable execution will not as a general rule be made, unless there exists some special difficulty or legal impediment to obtaining execution in the ordinary course by garnishment of the debt due to the execution debtor.—ROYAL TRUST CO. *v.* KRITZWISER, [1924] 3 D. L. R. 396; 2 W. W. R. 760.—**CAN.**

2453 vii. ——.]—Before a receiver by way of equitable execution can be appointed, there must be a legal right in the creditor to be paid out of the particular asset, which he cannot reach unless aided by the ct.; but the creditor cannot by this process reach a kind of asset not exigible under legal execution.—EATON *v.* BRANT (1924), 55 O. L. R. 316.—**CAN.**

s1. *Whether granted as of right.*]—It is erroneous to assume that because property of a judgment debtor is not liable to the ordinary processes of execution, the judgment creditor must be able successfully to invoke the equitable jurisdiction of the ct. to obtain realisation of the property.—MATTHEWSON *v.* STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—C.

n l. *Legal estate in remainder.*]—A vested interest in land subject to another person's life estate does not constitute a sufficient present interest in land to justify the appointment of a receiver with a view to realisation.—MATTHEWSON *v.* STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—**CAN.**

q l. ——.]—BARNES *v.* SHARPE, [1924] 2 D. L. R. 1119; 2 W. W. R. 462.—**CAN.**

PART VI.

s l. ——.]—Order made for examination, where it was disclosed that judgment debtor had purchased & put in his wife's name certain land & had paid out money on account of the purchase price & for interest & taxes.—BEAU MONDE LADIES' TAILORING CO. *v.* GARRETT, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

s ii. —— *Mother-in-law of judgment debtor.*]—Order made for examination, where it was disclosed that judgment debtor had made payments to his mother-in-law of sums which it was alleged she had lent him.—BEAU MONDE LADIES' TAILORING CO. *v.* GARRETT, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

sn. *Refusal to attend.*]—K. B. Rules (Sask.), Ord. 33, contains no provision for compelling the attendance of a person ordered to attend for examination other than that contained in r. 480.—SASKATOON HARDWARE CO. *v.* MCMANUS, [1924] 3 D. L. R. 344; 2 W. W. R. 809.—**CAN.**

EVIDENCE.

Part I.—General Principles.

2. *Add. Annotation :—Generally,* **Mentd.** Lake v. Simmons (1926), 95 L. J. K. B. 586.

4. *Add. Annotation :*—**Mentd.** The Sheaf Brook, [1926] P. 61.

30. *Add. Annotation :*—**Mentd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

55. After this case add "*See, also,* JURIES, Vol. XXX., p. 241, No. 391."

70. *Add. Annotation :*—**Mentd.** Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

101. *Add. Annotation :*—**Folld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

116. *Add. Annotation :* **Reld.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 115.

117. *Add. Annotation :* **Reld.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 115.

118. *Add. Annotation :* **Mentd.** Hale *v.* Coombes, (1925), 42 R. P. C. 328.

155. *Add. Annotation :* **Mentd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

167. *Add. Annotation :* **Mentd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

Part II.—Admissibility of Evidence.

312. For "**Letters from agent—Forming part of contract**" substitute "—— **Letters from agent—Forming part of contract.**"

In the cross-reference following this case, for "—— **After contract complete**" substitute "—— —— **After contract complete.**"

370. *Add. Annotation :*—**Reld.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

397. *Add. Annotation :* *As to* (1) **Reld.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692.

417. *Add. Citation :*—132 L. T. 220.

419. *Add. Annotations :* —**Mentd.** Holland *v.* Holland, [1925] P. 101; Warren *v.* Warren, [1925] P. 107; Mart *v.* Mart, [1926] P. 21; Selby *v.* Atkins (1926), 135 L. T. 45.

537. *Add. Annotation :* —**Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

544. *Add. Annotation :*—**Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

580a. Admission by author—As to copyright.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 624a, *post.*

595. *Add. Annotation :*—**Reld.** Warren *v.* Warren, [1925] P. 107.

624a. Agent of predecessor in title—Licensee of copyright.] (1) By an agreement in writing dated June 30, 1808, one G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1808, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place: —*Held:* a copy of the letter of Sept. 22, 1808, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties, who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since (*a*) being written by G.'s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result; & (*b*) it constituted an admission by defts.' predecessors in title.

(2) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incor-

PART I. SECT. 7, SUB-SECT. 1.

366 ii. ——.]—Where there was no unfairness to accused in admitting as evidence only a portion of a statement: —*Held:* the judge was not bound to admit the whole statement.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

PART II. SECT. 1.

sm. *By consent—Evidence otherwise inadmissible.*]—Evidence not otherwise admissible, or which would have been liable to rejection if any objection were taken to it, may be perfectly good evidence if admitted by the consent of the parties.—RAJMA KUMARI *v.* KEDAR NATH (1924), I. L. R. 46 All. 815.—**IND.**

PART II. SECT. 3, SUB-SECT. 2.—A.

oi. —— *Telephone conversation Proof of authority of agent.*]—*Held:* a telephone conversation was admissible, where evidence existed from which it could be inferred that the telephone conversation took place with a person authorised to engage in such a conversation.—*Re* DREYFUS (Louis) & SOUTH AUSTRALIAN MILLING & TRADING CO., [1923] S. A. S. R. 75.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—D. (b).

sn. *Report by agent to principal.*]—*Held:* a telegram & a letter dispatched shortly after a sale of goods by the seller's agent to his employers recording his version of the transaction may competently be referred to for the purpose of testing his credibility.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

PART II. SECT. 5, SUB-SECT. 1.

684 i. *As corroborative evidence.*]—Statements made by deceased after the execution of her will are admissible to corroborate a witness who has deposed to the execution with all the prescribed formalities.—HOWITT *v.* MCFARLANE, [1925] 2 D. L. R. 325; 36 O. L. R. 375.—**CAN.**

sp. *Must be statement of fact.*]—Evidence of a statement made by deceased, who died as the result of a blow struck by accused, that he hoped accused would not get into any trouble with the police over it as it was not his fault: *Held:* inadmissible, as the words only amounted to an expression of hope & opinion.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

rect, the party producing a certified copy of it may be precluded from relying on it as *primâ facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD. [1926] 1 K. B. 393; 95 L. J. K. B. 148; 134 L. T. 246; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 135 L. T. 650; 42 T. L. R. 666; 70 Sol. Jo. 756, C. A.

669. *Add. Annotation :—Generally*, **Mentd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

745. *Add. Annotation :—* **Follid.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436.

775. *Add. Annotation :—***Reld.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436.

968. *Add. Annotation :—Generally*, **Reld.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

969. *Add. Annotation :—***Reld.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

1004. *Add. Annotation :—***Reld.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

1024. *Add. Annotations :—***Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312. **Mentd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

1026. *Add. Annotation :—***Reld.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. K. B. 312.

Part III.—Modes of Proof and Weight of Evidence.

1264a. —— ——.]—It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State, & the information so received is conclusive.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

1273. *Add. Annotation :—* **Mentd.** The Jupiter (No. 2), [1925] P. 69.

1301. *Add. Annotation :—***Reld.** Brown *v.* Leech (1924), 94 L. J. K. B. 48.

1338. *Add. Citations :*—[1925] 1 K. B. 399; 94 L. J. K. B. 497; 132 L. T. 267; 17 B. W. C. C. 221.

*Add. Annotations :—***Mentd.** Young *v.* Londonderry Collieries (1924), 17 B. W. C. C. 215; Kennedy *v.* Horden Collieries, Bamford *v.* Charlaw & Sacriston Collieries, Bevan *v.* Joicey, [1925] 2 K. B. 438.

1402. *Add. Annotation :—***Expld.** Lal Chand Marwari *v.* Mahant Ramrup Gir (1925), 42 T. L. R. 159.

1421a. —— ——.]—(1) If a person has not been heard of for a term of not less than seven years, there is a presumption of law that he is dead. (2) The *onus* of proving the death of the person at any particular date must rest with the person to whose title that fact is essential.—LAL CHAND MARWARI *v.* MAHANT RAMRUP GIR (1925), 42 T. L. R. 159, P. C.

1445a. **On party to whose title fact essential.**]—LAL CHAND MARWARI *v.* MAHANT RAMRUP GIR, No. 1421a, *ante*.

1505. *Add. Annotation :—***Reld.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56.

Part IV.—Documentary Evidence.

1708. *Add. Annotation :—***Mentd.** Wing Lee *v.* Low, [1925] A. C. 819.

1894. *Add. Annotation :—***Mentd.** Berners *v.* Fleming, [1925] Ch. 264.

2129a. —— ——.]—Copies cannot be put in of letters of which notice to produce ought to be given.—R. *v.* MORGAN, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.

PART II. SECT. 5, SUB-SECT. 2.—E. (b).

752 ii. ——.]—In so far as words used by deceased were statements of facts :—*Held :* they were inadmissible, as there was nothing to show that deceased knew them to be contrary to his pecuniary or proprietary interests when he made them; & in so far as they related to opinion on what was in accused's mind they were not admissible, as they were not statements of fact.—R. *v.* SCHWARZ, [1923] S. A. S. R. 247.—AUS.

PART III. SECT. 5, SUB-SECT. 7.—G.

q i. *S.P.*—R. *v.* McPherson (1915), 33 W. L. R. 21; 9 W. W. R. 612; 8 Sask. L. R. 412.—CAN.

q ii. *Home-brew—Intoxicating liquor.*]—The ct. will not take judicial notice of the fact that home-brew is an intoxicating liquor.—R. *v.* MARSHALL, [1925] 1 D. L. R. 1132; 43 Can. Crim. Cas. 253; [1924] 3 W. W. R. 665.—CAN.

PART III. SECT. 6, SUB-SECT. 6.—B.

1410 xviii. —— ——.]—*Re* JELPS, [1925] 1 W. W. R. 735.—CAN.

PART III. SECT. 6, SUB-SECT. 6.—C. (a).

1423 ii. ——.]—Under Indian Evidence Act, 1872, s. 108, when the ct. has to determine the date of the death of a person who has not been heard of for a period of more than seven years, there is no presumption that he died at the end of the first seven years, or at any particular date.—LAL CHAND MARWARI *v.* RAMRUP GIR (1925), 53 L. R. Ind. App. 24.—IND.

PART IV. SECT. 5, SUB-SECT. 4.—C.

1941 i. *Duplicate originals.*]—Deft. let land to pltf., & a lease having been written, A. affixed seals & signed their names to it. It was then agreed that A. should make a copy of the lease & execute it for them in the same manner; he did so, & afterwards, in the presence of both parties, delivered one copy to pltf. & the other to deft. :—*Held :* they were duplicate originals, & either of them was primary evidence.—LEONARD *v.* YOUNG (1858), 4 All. 111.—CAN.

2304. *Add. Annotations :*—**Mentd.** Rodwell *v.* Wade (1924), 23 L. G. R. 174; Keeling *v.* Wirral R. D. C. (1925), 23 L. G. R. 201.

2570. *Add. Annotation :*—**Reld.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168.

2587. *Add. Annotation :*—**Reld.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168.

2614. *Add. Annotation :*—**Mentd.** Gregg *v.* Richards, [1926] Ch. 521.

2639. *Add. Annotation :*—**Reld.** R. *v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192.

2683. *Add. Annotation :*—**Mentd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

2685. *Add. Annotation :*—**Mentd.** A.-G *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

2722. *Add. Annotation :*—**Consd.** Partington *v.* Partington & Atkinson, [1925] P. 34.

2723. *Add. Annotation :*—**Consd.** Partington *v.* Partington & Atkinson, [1925] P. 34.

2757a. —— ——.]—In a suit for restitution of conjugal rights, the validity of the marriage in Jamaica having been proved in a previous suit of a similar nature between same parties, further proof of its validity was not required. —VERNEY *v.* VERNEY (1920), 36 T. L. R. 203.

3036. *Add. Annotation :*—**Reld.** Selby *v.* Atkins (1926), 135 L. T. 45.

3122a. —— ——.]—In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown &, therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo 260, C. A.

3122b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 1264a, *ante*.

3157. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3158. *Add. Annotation :*—**Overd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3159. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3163. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3164. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3165a. —— **Marriage of parents.**]—In an action brought by pltfs., who claimed to be two of the next of kin of an intestate, for administration of her estate, the usual order for inquiries as to the next of kin & heir-at-law of the intestate was made. In taking those inquiries before the master it became necessary to prove the lawful marriage of the parents of the intestate before her birth &, as no record of the marriage could be found, a summons was taken out by pltfs. for the determination of the question whether three certificates of birth of three of the children, including the intestate, of those parents & a certificate of death of one of those children were *prima facie* or any evidence of the lawful marriage of the parents :—*Held :* the certificates were admissible, but not alone sufficient, because taken by themselves they did not identify the persons therein mentioned. It would be for the master at the inquiry to determine whether the certificates, taken in conjunction with the other evidence adduced before him, were sufficient to establish the fact of marriage between the parents in question. *Re Wintle*, No. 3158, overd. — *Re* STOLLERY, WEIR *v.* TREASURY SOLICITOR, [1926] Ch. 284; 95 L. J. Ch. 250; 134 L. T. 430; 90 J. P. 90; 42 T. L. R. 253; 70 Sol. Jo. 385; 24 L. G. R. 173, C. A.

3177a. —— **Marriage of parents of deceased.**] *Re* STOLLERY, WEIR *v.* TREASURY SOLICITOR, No. 3165a, *ante*.

3179. *Add. Annotation :* **Distd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3287. *Annotations :*—**Apprvd.** Hendon Paper Works Co. *v.* Sunderland Assmt. Com., [1915] 1 K. B. 763. **Folld.** Fowler (Leeds) *v.* Hunslet Assmt. Com., [1917] 1 K. B. 720. **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 300.

3288. *Annotations :*—**Folld.** Fowler (Leeds) *v.* Hunslet Assmt. Com., [1917] 1 K. B. 720. **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309. **Reld.** Davis *v.* Pontypridd Union Assmt. Com., Rhondda Overseers & Rhondda U. C. (1916), 85 L. J. K. B. 1545.

3371. *Add. Annotation :* **Reld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3289. *Add. Annotation :*—**Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

3376. *Add. Annotation :*—**Mentd.** Warren *v.* Warren, [1925] P. 107.

3377. *Add. Annotation :* —**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3388. *Add. Annotation :* **Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3389. *Add. Annotation :*— **Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3422a. —— —— ——.]—As Jersey is in the diocese of Winchester, it is unnecessary to call a Jersey lawyer to prove a marriage

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PART IV. SECT. 9, SUB-SECT. 3.—A.

st. Of power of attorney—Proof of contents of original only.]—Where an office copy of a power of attorney, purporting to have been executed, was put in evidence :—*Held :* Conveyancing & Law of Property Act, 1881, s. 48 (4), merely obviates the necessity for production of an original instrument by enacting that an office copy of an instrument deposited as therein provided shall, without further proof, be sufficient evidence of its contents, but the sect. does not make such copy evidence either of the truth of the contents or of the identity of the person by whom the original was made. —O'KANE *v.* MULLAN, [1925] N. I.—1R.

PART IV. SECT. 9, SUB-SECT. 5.—A.

f. Reed. on other grounds, 18 A. R. 135.

PART IV. SECT. 12, SUB-SECT. 10.—A. (d).

sw. Certificate of professor of anatomy.]—A certificate from the professor of anatomy at the Grant Medical College, Bombay, as to certain bones submitted to him for examination is not *per se* admissible in evidence, but must be proved by calling the professor as a witness.—R. *v.* AMRITA (1922), I. L. R. 47 Bom. 74.—IND.

PART IV. SECT. 12, SUB-SECT. 19.—G.

sz. Register of titles to land kept under Local Registration of Title (Ireland) Act, 1891 (c. 66).]—The above register is a public register & the documents kept in the office for registration of titles are public documents.—*Re* FITZGERALD, [1925] 1 I. R. 42.—1R.

celebrated in a church in Jersey.—PRITCHARD *v.* PRITCHARD (1920), 37 T. L. R. 104.

3437a. —— —— —— ——.]—L. (OTHERWISE B.) *v.* L. (1919), 36 T. L. R. 148; 64 Sol. Jo. 225.

3513a. Stationers' Hall register—Of first performances of dramatic productions.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 624a, *ante*.

3543. *Add. Annotations :—As to* (2) **Consd.** Falcon *v.* Famous Players Film Co. (1926), 135 L. T. 650. **Apld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3547. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.

3572. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino (1926), 43 T. L. R. 91.

3580. *Add. Annotation :*—**Mentd.** Busby *v.* Avgherino (1926), 43 T. L. R. 91.

3584. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 135 L. T. 281.

3589. *Add. Annotation :*—**Mentd.** Busby *v.* Avgherino (1926), 43 T. L. R. 91.

3790. *Add. Annotation :*—**Mentd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co., [1926] A. C. 108.

3860. *Add. Annotation :*—**Mentd.** Wing Lee *v.* Lew, [1925] A. C. 819.

3907. *Add. Annotation :—As to* (3) **Refd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

3911. *Add. Annotations :*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312. **Mentd.** Moser *v.* Ambleside U. D. C. (1924), 89 J. P. 118.

3914. After this case add "*See, also,* HIGHWAYS, No. 355a."

3959. *Add. Citation :*—130 L. T. 445.

Part V.—Witnesses.

3975a. ——.]—A judge cannot exclude a child-witness from the box on the ground that the case is unfit for him or her to be concerned in; his power is limited to the usual inquiry about the child's understanding of an oath or of the duty of telling the truth.—R. *v.* MOSCOVITCH (1924), 18 Cr. App. Rep. 37, C. C. A.

4027. *Add. Annotation :*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4029. *Add. Annotation :*—**Apld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4053. *Add. Annotation :*—**Mentd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

4130. *Add. Annotation :*—**Refd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685.

4286. The first line of the text of the paragraph should read "Where at law the party calls."

4586. *Add. Annotation :*—**Refd.** The Massilia, [1926] P. 180.

4729a. Whether obligations of oath understood—When witness may be asked.]—A judge is entitled to question a witness at any stage of his evidence with a view to ascertaining whether he recognises the obligations of an oath.—R. *v.* WILSON (1924), 18 Cr. App. Rep. 108, C. C. A.

PART IV. SECT. 13, SUB-SECT. 5.

4l. —— ——.]—A book maintained by members of a family of hereditary bards, containing entries of domestic events occurring in the family to which they rendered service, the events recorded being such as are usually known to a family bard in connection with his calling:—*Held:* admissible as evidence concerning the relationship of the members of the family, whose history was entered therein.—ANANDI *v.* NANU LAL (1924), I. L. R. 46 All. 665.—**IND.**

PART IV. SECT. 18, SUB-SECT. 2.

3958 i. *Surveyor's report.*]—*Held:* not admissible to prove the extent of the lands he was employed to survey.—R. *v.* PRICE BROTHERS & CO., [1925] 3 D. L. R. 393; revsg., [1924] 3 D. L. R. 817.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.—B. (a).

4060 xxi. ——.]—Under Canada Temperance Act, 1878, s. 123, accused is not bound to criminate himself.—R. *v.* HALPIN (1886), 12 O. R. 330.—**CAN.**

4060 xxii. ——.]—The refusal "to answer any question touching the case" in Liquor License Act, s. 115, means any question which may be lawfully put, which the witness is otherwise bound to answer.—*Re* ASKWITH (1899), 31 O. R. 150.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.—C.

4105 i. *Who may take objection—Not counsel.*]—The claim for protection against incriminating questions is a personal one & must be made by the party himself & under oath. The objection of his counsel will not do.—R. *v.* MCINTYRE (1909), 7 E. L. R. 50.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—B. (d).

ss. *Notes made by police officer.*]—Notes made by a police officer for the purpose of making a report to his superior officer are confidential, & their production cannot be insisted on by accused.—HUSBANDWOOD *v.* AULD, [1926] S. C. (J.) 4. **SCOT.**

PART V. SECT. 3, SUB-SECT. 5.—A.

4493 iii. ——.]—*Expert witness.*]—*Held:* a medical witness could not refuse to give evidence because his fees had not been paid.—R. *v.* HUDLEY (N. S.), [1925] 1 D. L. R. 494; 43 Can. Crim. Cas. 208.—**CAN.**

PART V. SECT. 3, SUB-SECT. 7.—A. (c) i.

4645 i. *General rule—Clear case must be made out.*]—DESROCHERS *v.* QUEBEC LIQUOR COMMISSION & SIMARD (1922), 37 Can. Crim. Cas. 17; 23 Q. P. R. 427.—**CAN.**

4649 iv. ——.]—A witness, summoned by the High Ct. to give evidence, left the jurisdiction without being discharged as a witness & without the permission of the ct., in order to avoid giving evidence:—*Held:* such conduct amounted to contempt, & the High Ct. had inherent jurisdiction to punish for that contempt.—EBRAHIM MAMOOJEE PAREKH *v.* R. (1926), I. L. R. 4 Ran. 257.—**IND.**

PART V. SECT. 5, SUB-SECT. 2.

4759 ii. —— —— *Two plaintiffs witnesses.*]—*Semble:* when there are two pltfs. & both are witnesses, deft. has not the right to insist that while one of them is giving his testimony the other shall be excluded.—MCINTYRE *v.* MCINTYRE, [1925] 2 W. W. R. 581.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.—A.

ab. *Evidence of foreign witness—When interpreter allowed.*]—While it is desirable that a foreigner should not be allowed to give his testimony through an interpreter if he really understands English, yet where a witness persists in stating his ignorance of English & that he does not understand the questions put to him, & there is no evidence that he is not speaking the truth, he should not be forced to testify in English, especially where the result is a mass of unintelligible evidence.—PONOMOROFF *v.* PONOMOROFF, [1925] 3 W. W. R. 673.—**CAN.**

—— —— *In criminal trials.*]—*See* CRIMINAL LAW, Vol. XIV., p. 264.

PART V. SECT. 6, SUB-SECT. 7.—E.

s i. ——.]—Before a witness is allowed to refresh his memory of a statement made by another by reference to a memorandum of it made at the time, he must be able to state

5022. *Add. Annotation :*—**Reld.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

5027. *Add. Annotation :*—**Consd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

5048. *Add. Annotations :*—**Mentd.** Dotzauer *v.* Dotzauer (1925), 41 T. L. R. 280 ; Lankester *v.* Lankester & Cooper, [1925] P. 114 ; Preger (otherwise Prager) *v.* Preger (otherwise Prager) (1926), 134 L. T. 670.

5067. *Add. Annotation :*—**Mentd.** Roberts *v.* Hopwood, [1925] A. C. 578.

5107. The second line of this paragraph should read " out to be unfavourable to the party calling him is not."

Part VI.—Expert Evidence.

5407a. —— Only medical witnesses—Not research student in toxicology.]—NIGHTINGALE *v.* BIFFEN, HEWITT *v.* BIFFEN (1925), 18 B. W. C. C. 358, C. A.

5433. *Add. Annotation :*—**Reld.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

Part VII.—Evidence by Affidavit.

5493. *Add. Citations :* 94 L. J. Ch. 73 ; 132 L. T. 540.

Add. Annotation :—**Mentd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

5573. *Add. Annotation :*—**Mentd.** *Re* Reddaway's Appln., [1925] Ch. 693.

5951a. — — In material part of affidavit Proof of time of erasure.]—The ct. allowed a certificate of acknowledgment & affidavit of verification, taken in New South Wales, to be received & filed, notwithstanding an erasure in a material part of the affidavit, there being satisfactory evidence, by affidavit, that the erasure was made before the acknowledgment & affidavit were taken & sworn.—*Re* BINGLE (1851), 15 C. B. 419 ; 2 C. L. R. 1793 ; 23 L. T. O. S. 177 ; 139 E. R. 500.

6015. *Add. Annotation :*—**Mentd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

6052a. — — —.]—ANON., No. 6108a, *post.*

6053a. —— No commissioner available.]—*Re* GROOM, No. 6066a, *post.*

6066a. Notary public—No commissioner available.]—The ct. allowed a certificate of acknowledgment under Fines & Recoveries Act, 1833 (c. 74), s. 84, to be filed under s. 85 where the affidavit verifying the certificate was sworn before a notary public in the Hebrides, as the affidavit on which the application was made deposed that there was no comr. of the ct. in the Hebrides or nearer than the mainland. *Re* GROOM (1869), 17 W. R. 589.

6108a. — — — — —.] The ct. refused to file the certificate of the acknowledgment of a deed by a married woman resident in America, verified by an affidavit made before a notary public, without an affidavit that notaries public are the proper officers for taking affidavits in America, & also as to the identity of the comrs.—ANON. (1839), 3 Jur. 125.

6153. *Add. Annotation :* **Mentd.** Hunter *v.* Stadtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 183.

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that such statement was truly & correctly entered in the memorandum, & where a copy of the memorandum is sought to be used the witness must be able to show that while the entry was fresh in his mind he compared the copy with the original entry, & that he found the copy correct.—R. *v.* ELDER, [1925] 3 D. L. R. 447 ; [1925] 2 W. W. R. 545 ; 44 Can. Crim. Cas. 75 ; 35 Man. L. R. 161.—**CAN.**

PART V. SECT. 8, SUB-SECT. 2.—C. (b).

5168 i. *Letter written by witness.*]—Where a telegram & a letter were dispatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction :—*Held :* not corroboration of the agent's oral testimony, although they might competently be referred to for the purpose of testing his credibility.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

PART V. SECT. 9, SUB-SECT. 1.

5209 i. *Whether necessary.*] McNAB *v.* COWARD, [1925] 4 D. L. R. 712, *affg.*, [1925] 1 D. L. R. 741.—**CAN.**

sc. *What constitutes corroboration—Whether letter written by witness—About time of event in question.*] *Held :* a telegram & a letter despatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction were not corroboration of the agent's oral testimony.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

sd. *Of telephone conversation.*] A person who hears a telephone conversation may give evidence to corroborate the person whom he was with & who was the actual speaker.—HANSON *v.* GLEANER, LTD., [1925] 3 D. L. R. 189.—**CAN.**

PART VI. SECT. 1.

c i. *Construction of Ontario Evidence Act, s. 10 ;* BUTTRUM *v.* LOCKE, [1925] 3 D. L. R. 45 ; 57 O. L. R. 97.—**CAN.**

s. For " *Conflict of opinion as to value* " read " *Conflict of opinion : Duty of court Conflict of opinion as to value.*"

s i. — — —.] HAY *v.* BAIN, [1925] 2 D. L. R. 948.—**CAN.**

s ii. — — — —.] Where a case is complicated by the introduction of opinion evidence, particularly in cases where the testimony is that of medical men, it is the duty of the judge to arrive at his own conclusion after carefully considering the evidence of the experts, & it is not enough for him to say, " I doubt & cannot resolve the doubt because an expert also doubts."—BENNETT *v.* PEATTIE (1920), 57 O. L. R. 233.—**CAN.**

Part VIII.—Evidence out of Court.

6239. *Add. Annotation :*—**Mentd.** *Re* Southerden, Adams *v.* Southerden, [1925] P. 177.

6604. *Add. Annotation :*—**Mentd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

Part XI.—Colonial and Foreign Law.

6872. *Add. Annotation :*—**Reld.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

3876a. ——— ———.]—Pltf. divorced her husband in Franco & made a verbal agreement with him pending the divorce proceedings that she would not ask for alimony if he would promise to assist her when he should be in a position to do so, unless in the meantime she had married a wealthy man or had ceased to live a chaste life :—*Held :* (1) the validity in French law of such an agreement could not be presumed by the judge when the expert witnesses as to French law had given no evidence on the point ; (2) the French witnesses having returned to France after having given their testimony, it would not be just to allow the pleadings to be amended so as to allow further proof of the French law.—DENNISTOUN *v.* DENNISTOUN (1925), 69 Sol. Jo. 476.

PART VIII. SECT. 1, SUB-SECT. 5.—F.

a l. ——.]—*Re* WEINGARDEN, [1925] 3 D. L. R. 1036 ; 5 C. B. R. 606. **CAN.**

PART VIII. SECT. 1, SUB-SECT. 5. H.

l l. *Illness of plaintiff.*]—Under Supreme Ct. Ord. 37, r. 5 (B. C.), pltf. may, on the grounds of serious illness, obtain leave to issue a writ of commission to have his evidence taken for use on the trial before the time for appearance has elapsed.—KELLY *v.* KELLY, [1925] 1 W. W. R. 332.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.—C.

6523 l. *What must be included—Names of witnesses.*]—There is no rigid rule that such names must be given in the order for the commission.—WATKINS (J. R.) Co. *v.* CAFFERKY, [1925] 3 D. L. R. 805 ; [1925] 2 W. W. R. 588.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.—D.

6540 l. *What must be inserted—Names of witnesses.*]—There is no rigid rule that such names must be given in the commission.—WATKINS (J. R.) Co. *v.* CAFFERKY, [1925] 3 D. L. R. 805 ; [1925] 2 W. W. R. 588.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—A.

ss. *May be put in by other side.*]—GAINERS *v.* CANADIAN NORTHERN RY. Co., [1925] 3 D. L. R. 369.—**CAN.**

PART VIII. SECT. 4.

m l. *For use of foreign court.*]—Under Foreign Tribunals Evidence Act, 1856, the ct. is empowered to order the examination of witnesses within its jurisdiction, whose examination is applied for by a ct. of competent jurisdiction in a foreign country.—LORD ADVOCATE, THE PETITIONER, [1925] S. C. 568.—**SCOT.**

PART XI. SECT. 1.

sl. *Jurisdiction to order.*]—*Held :* even if it was within the power of the ct. to examine foreign written law so as to ascertain what that law was, it was always competent, if the ct. considered it necessary, to order a proof of foreign law, whether written or unwritten.—HIGGINS *v.* EWING'S TRUSTEES, [1925] S. C. 440.—**SCOT.**

PART XI. SECT. 3.

6869 vl. ——— ———.]—The canon law of the Roman Catholic Church is foreign law, which must be proved as a fact & by the testimony of expert witnesses according to the well-settled rules as to proof of foreign law. The foreign law applicable to a case must be taken from the statement of the expert witness as to what the law is, & not from text-books or codes referred to by him.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—**IR.**

EXECUTORS AND ADMINISTRATORS.

Part I.—The Office of Executor or Administrator.

296. ***Add. Annotation*** **:—Reld.** *Re* **City Equitable Fire Insce., [1925] Ch. 407.**

427. ***Add. Citations*** **:—Moore, K. B. 146;** ***sub nom.*** **Russel** *v.* **Prat, 1 And. 177;** ***on appeal*** **(1589), 1 Leon. 193, Ex. Ch.**

Part II.—Probate and Letters of Administration.

784. ***Add. Annotation*** **:—Reld. Lal Chand Marwari** *v.* **Mahant Ramrup Gir (1925), 42 T. L. R. 159.**

858. ***Citations*** **:—For "34 Ch. D. 177" read "21 Ch. D. 177."**

1019. ***Add. Annotation*** **:—*Generally*, Reld. *In the Estate of* Jessop (1924), 132 L. T. 31.**

1164. ***Add. Annotation*** **:—Consd. *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.**

1383. ***Add. Annotation*** **:—Consd. *In the Estate of* Todd, [1926] P. 173.**

1388a. —— ——.]—*In the Estate of* Todd, No. 1398a, *post.*

1398a. —— **Wills not independent.**]—If testamentary papers are independent, one dealing exclusively with property within the jurisdiction & the other with property outside it, there is no obligation on a party propounding the first to obtain probate of the second. The question is whether the papers are independent or interdependent.

Testator left two wills, one English, the other American; the latter dealt exclusively with property outside the English jurisdiction, but the two documents were interdependent with regard to the residue, which was liable for English estate duty. The exors. of the two wills were different persons. Testator had expresly directed that the American will should be "probated" in America:—*Held:* (1) the two wills & a codicil to the English will should all be proved in England; (2) the document to be retained in the English Probate Registry as evidence of the testamentary act of making the American will should be an examined & sealed copy of that will, & after probate the original American will should be handed out to the exors. named therein for probate in America.—*In the Estate of* Todd, [1926] P. 173; 95 L. J. P. 105; 135 L. T. 381; 42 T. L. R. 545; 70 Sol. Jo. 671.

1410a. ——.] - *In the Estate of* Todd, No. 1398a, *ante.*

1508. ***Add. Annotation*** **: —Reld. A.-G. for Alberta** *v.* **Cook, [1926] A. C. 444.**

1509. ***Add. Annotation*** **: —Reld. A.-G. for Alberta** *v.* **Cook, [1926] A. C. 444.**

1510. For "—— Protection order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary" read "—— Separation order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary."

1566. ***Add. Annotation*** **:— Reld. A.-G. for Alberta** *v.* **Cook, [1926] A. C. 444.**

1883a. —— **During minority.**]—Jud. (Consolidation Act, 1925 (c. 49), s. 160 (1), directs that either a trust corpn., with or without an individual, or not less than two individuals, shall take a grant of administration in the case of an interest in the estate during minority of the party interested; but this provision must be read subject to the modification of sect. 162 (1), namely, that the ct. in the case of insolvency is to have a discretion to grant administration to some person other than those interested in the residue. Under the latter sect. it is competent for the ct., even during a minority, to appoint a creditor to be a single administrator, as it could formerly have done under Ct. of Probate Act, 1857

PART I. SECT. 1.

sa. ***Nature of office.***]—The office of exor. is an administrative appointment, not a benefit, & a widow who has been appointed extrix. under her husband's will is not bound to elect between accepting the office & claiming her legal rights.—Smart v. Smart, [1926] S. C. 392.—SCOT.

PART I. SECT. 3, SUB-SECT. 2.—A. (b).

sb. ***Universal legatee—Trust to divide between legatee & others.***]—A will reading, "I bequeath all my estate to Mrs. S. to be divided equally among Mrs. S. & her brothers & sister":—*Held:* not to constitute Mrs. S. an extrix. according to the tenor of the will.—*Re* McMillan, [1925] 3 W. W. R. 524.—CAN.

PART I. SECT. 9.

c i. ——.]—Under the discretionary power given him by Trustee Act, R. S. S., 1920 (c. 75), s. 71, the judge appointed a judicial trustee in place of an extrix.—Small *v.* Packard, [1925] 1 W. W. R. 897.—CAN.

PART I. SECT. 12, SUB-SECT. 2.

a i. —— ——.]—The exor. named in a will represents the estate of deceased for all purposes, even before probate of the will is taken out. The taking out of probate establishes the will from the date of the death of testator, & thereby all intermediate acts of the exor. in connection with the estate are validated.—Mrigraj *v.* Krishna Chandra Bhattacharji (1923), I. L. R. 46 All. 256.—IND.

PART II. SECT. 6, SUB-SECT. 1.—C.

p i. —— *Allegation of undue influence.*]—An allegation that the appointment of a person as exor. under a will is invalid & of no effect because such person caused or procured the will to be written, is insufficient to sustain a claim to set aside the appointment.—Smith *v.* Bird (1924), 41 N. L. R. 381.—S. AF.

PART II. SECT. 6, SUB-SECT. 5.—B.

1035 i. *Proof of contents. Need of stringent proof.*]—*In* Perry, [1925] 1 D. L. R. 930; 56 O. L. R. 278.—CAN.

PART II. SECT. 6, SUB-SECT. 9.—B.

1053 i. —— *Wherever ground for suspicion.*]—Howie *v.* Chatterton, [1926] N. Z. L. R. 595.—N.Z.

PART II. SECT. 11, SUB-SECT. 4.—C.

1447 ii. —— ——.]—In the absence of special circumstances, a sole administrator should be appointed to the estate of deceased, rather than joint administrators, even when the claimants are equal in degree of kindred to deceased.—Stoney *v.* Stoney (1925), I. L. R. 2 Pat. 506.—IND.

(c. 77), s. 73.—*Re* HERBERT, [1926] P. 109; *sub nom. In the Goods of* HERBERT, 95 L. J. P. 53; 135 L. T. 123; 42 T. L. R. 469.

2585a. Trust estate vested in tenant for life—Settled Land Act, 1925 (c. 18).]—Where testator, dying in 1897, appointed his wife A. sole extrix. & devised to her for life all his real estate with remainder to B. in fee simple absolutely, & A. died in Feb. 1926, intestate & a widow, leaving no statutory next of kin & no trustees for the purposes of the above Act were ever appointed:—*Held:* B. was entitled under Jud. (Consolidation) Act, 1925 (c. 49), s. 155 (1), to a grant of limited administration in respect of such real estate. *Re* DALLEY (1926), 70 Sol. Jo. 839.

2911. *Add. Annotation:*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

3125. *Add. Annotation:* **Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3126. *Add. Annotation:*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3127. *Add. Annotation:*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3127a. ——.] The proviso to R. S. C., Ord. 65, r. 1, that nothing in that rule contained shall deprive an exor. who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules theretofore acted upon in the Chancery Div., governs the case of bare exors. who reasonably propound a will & codicil, even if, though the will is pronounced for, the codicil is pronounced against. The position of such exors. differs from that of persons named as exors. in a testamentary paper which they unsuccessfully propound. Having established the validity of the will, & made good their position as testator's exors., they are entitled to their costs of the litigation out of the estate as between solr. & client, & can be deprived of that right, which rests substantially upon contract, only if they have acted culpably or unreasonably. Until that has been established, their costs are not in the discretion of the ct., & notwithstanding Jud. Act, 1873 (c. 66), s. 49, repealed & re-enacted by Jud. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (h), an appeal lies without leave from an order condemning them in costs or depriving them of costs out of the estate.—*In the Estate of* PLANT, WILD *v.* PLANT, [1926] P. 139; *sub nom. Re* PLANT, WILD *v.* PLANT, 95 L. J. P. 87; 135 L. T. 238; 42 T. L. R. 443; 70 Sol. Jo. 605, C. A.

3163. *Add. Annotation:*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3164. *Add. Annotation:*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3175. *Add. Annotation:* **Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3181. *Add. Annotation:*—**Refd.** *In the Estate of* Southerden, Adams *v.* Southerden, [1925] P. 177.

3303. *Add. Annotation:*—**Refd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3312. *Add. Annotation:*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3315. *Add. Annotation:*—**Distd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

Part III.—Interest of Representative in Deceased's Property.

3509. *Add. Annotation:* **Refd.** Toates *v.* Toates, [1926] 2 K. B. 30.

3611. *Add. Annotation:* **Mentd.** Savil *v.* Roberts (1698), 1 Salk. 13.

3 55. *Add. Annotation:* **Refd.** *Re* Portman (No. 2), [1925] Ch. 294.

3658. *Add. Annotation:* **Mentd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co. (1925) 42 T. L. R. 80.

3818a. ——.]—The effect of Land Transfer Act, 1897 (c. 65), ss. 1 & 2, is to impose an "express trust" within Jud. Act, 1873 (c. 66), s. 25 (2), on the personal representatives of deceased in respect of real estate, & so to prevent Real Property Limitation Act, 1874 (c. 57), from running in their favour.—TOATES *v.* TOATES, [1926] 2 K. B. 30; 95 L. J. K. B. 526; 135 L. T. 25; 90 J. P. 103, D. C.

PART II. SECT. 15, SUB-SECT. 2. B. (e).

p. *Refd.* on other grounds, 37 O. L. R. 498.

PART II. SECT. 16, SUB-SECT. 2. C.

af. *As to person entitled—Advocate consenting without instructions.*] Where an advocate for one of the parties under a misapprehension consented to the other party being granted the letters:—*Held:* if such consent was given by the advocate without instructions, the client might withdraw the consent at any time prior to the actual issue of letters. KYONG HOK TSEK *v.* KYONG SOON SUN (1925), I. L. R. 3 Ran. 261. **IND.**

PART II. SECT. 19.

ag. *Duty of registrar—Supreme Court of New Zealand.*] Where letters of administration have been duly granted in England & are produced to the registrar of the Supreme Ct. of New Zealand, & a copy thereof left with him, the registrar is bound under Administration Act, 1908, s. 43, to reseal letters of administration, & there is no need of an application to the ct., for the ct. has no discretion in the matter. In the absence of fraud in the will or by the administrator the ct. has no power to set aside such resealing.—*Re* WILLCOX, [1925] N. Z. L. R. 525.—**N.Z.**

PART II. SECT. 20, SUB-SECT. 3.—A. (b).

3187 iv. ——.]—Testator, 87 years old, executed a will, & probate was opposed on the grounds of want of testamentary capacity & undue influence. The ct. pronounced in favour of the will, but only after much consideration. Much of the evidence was not available to the caveators, & the ct. considered they were amply justified in opposing the will:—*Held:* the caveators should be relieved of the Public Trustee's costs, but should not be granted costs out of the estate.—*Re* PATERSON (DECEASED), [1924] N. Z. L. R. 441.—**N.Z.**

PART II. SECT. 21, SUB-SECT. 10.

ak. *Jurisdiction of court—To alter previous order.*]—In addition to its powers under Succession Act, s. 234, & Probate & Administration Act, s. 50, the ct. has power in review to alter its previous order in contested proceedings for the grant of probate or letters of administration.—KYONG HOK TSEK *v.* KYON SOON SUN (1925), I. L. R. 3 Ran. 261.—**IND.**

Part IV.—Duties of Representative.

3899. *Add. Annotation :—As to* (2) **Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

4225. Delete the cross-reference immediately preceding this case.

4591. *Add. Annotation :*—**Consd.** *Re* Quintin Dick, Cloncurry v. Fenton, [1926] Ch. 992.

4630. *Add. Annotation :*—**Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

4653. *Add. Annotation :*—**Refd.** Herbert v. I. R. Comrs., I. R. Comrs. v. Herbert (1925), 9 Tax Cas. 593.

4869a. —— ——.]—The ct. has power where realisation has been postponed for the benefit of the residuary legatees to direct that a legatee should be paid, not £4 per cent. under R. S. C., Ord. 65, r. 64, but £5 per cent. as from one year from the death of testator upon the legacy moneys.—*Re* BRINTON, BRINTON v. PEERS (1923), 67 Sol. Jo. 704.

4953. *Add. Annotation :* **Refd.** *Re* Whitrod, Burrows v. Base, [1926] Ch. 118.

5072. *Add. Annotation :* As to (1) **Refd.** *Re* Pennington & Owen, [1925] Ch. 825.

5079. *Add. Annotation :* **Distd.** *Re* Pennington & Owen, [1925] Ch. 825.

5202. *Add. Annotation :* **Refd.** *Re* Griffiths, Jones v. Jenkins, [1926] Ch. 1007.

5331. *Add. Annotation :* **Refd.** *Re* Whitrod, Burrows v. Base, [1926] Ch. 118.

5334. *Add. Annotation :* **Refd.** *Re* Whitrod, Burrows v. Base, [1926] Ch. 118.

5335. *Add. Annotation :* **Apld.** *Re* Whitrod, Burrows v. Bax (1925), 70 Sol. Jo. 209.

5337. *Add. Annotation :* **Refd.** *Re* Whitrod, Burrows v. Base, [1926] Ch. 118.

5340a. — — .] Testator left his property on trust for sale & realisation, & thereafter gave & bequeathed one-tenth part to A., two-tenth parts to C's children, & the rest in tenth & twentieth parts to specific objects in a similar manner, & "to K. £30, to L. £40, to Nonconformist Ministers of D. the residue in equal shares": *Held:* the will must be read as though after disposing of nine-tenths of his residuary estate he directed the remaining tenth, charged with the two sums as therein provided, to be divided among the ministers, & there was an intestacy as to the undivided aliquot shares of persons who predeceased testator. *Re* WHITROD, BURROWS v. BASE, [1926] Ch. 118; 95 L. J. Ch. 205; 134 L. T. 627; 70 Sol. Jo. 209.

5341. *Add. Annotation :* **Refd.** *Re* Whitrod, Burrows v. Base, [1926] Ch. 118.

5354. *Add. Annotations :* **Apld.** Archer-Shee v. Baker (1926), 95 L. J. K. B. 929. **Refd.** [illegible] testate. The son, as exor., divided the estate, which was movable, equally between himself & his sister. At the date of division the daughter's share had not been exhausted by the cost of her maintenance since his death:—*Held:* as any claim there might be against the rest of the estate for aliment was merely contingent, the exor. was not bound to retain the remaining share of the estate to meet that claim.—EDINBURGH PARISH COUNCIL v. COUPER, [1924] S. C. 139.—**SCOT.**

payable out of that portion of his estate earmarked in the way indicated. *Re* LAMHAM (1921), 50 O. L. R. 137.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3. B. (e).

n i. — — .] Where a will directs that the proceeds of sales of property of the estate shall be deposited in a chartered bank, such proceeds cannot be otherwise invested except by consent of all persons interested.—*Re* WALTERS, [1925] 2 W. W. R. 557. **CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—B.

4162 i. *Simple contract debt due to the Crown—Priority over specialty & simple contract debts due to subject.*]—A debt incurred by the purchase of wheat from the Minister of Agriculture, under Wheat Marketing Acts, is a Crown debt, & should be paid in priority to all other debts of intestate.—*Re* MCMAHON, LAWSON v. INTESTATE ESTATES CURATOR, [1921] V. L. R. 549.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

4167 i. *Priority over specialty & simple contract debts.*]—In the administration of assets, a judgment obtained against deceased is entitled to priority over simple contract & specialty creditors, but it is essential to the judgment that it should have been docketed.—FRONTENAC LOAN CO. v. MONROE (1886), 3 Man. L. R. 462.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (c).

4206 i. *Against deceased.*]—FRONTENAC LOAN CO. v. MONROE, No. 1167 i., *ante*.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

ai. *Future liability contingent—Rights of executor to distribute residue.*]—The father of a pauper lunatic daughter, who had become chargeable to the parish council, admitted his liability to aliment her, & died intestate. The son, as exor., divided the estate, which was movable, equally between himself & his sister. At the date of division the daughter's share had not been exhausted by the cost of her maintenance since his death:—*Held:* as any claim there might be against the rest of the estate for aliment was merely contingent, the exor. was not bound to retain the remaining share of the estate to meet that claim.—EDINBURGH PARISH COUNCIL v. COUPER, [1924] S. C. 139.—**SCOT.**

PART IV. SECT. 5, SUB-SECT. 4. C.

am. *Discretion given by will :* A will contained a bequest (para. 5) to plff. of $300 per annum during his lifetime, "to be paid as soon as the finances of my estate will permit my exors. to do so." By para. 7 testatrix directed that "it shall not be incumbent to pay any bequest until three years after my decease, & my husband, & any other exors. after his death, shall decide when the amounts shall be paid & in what amounts from time to time." By para. 12 testatrix authorised her exors. "at any time to withhold any payment of legacy or bequest until such time as they may consider it advisable to make same":—*Held:* nothing in paras. 5 & 7 authorised deft. to withhold payment of plff.'s legacy, & the discretion given by para. 12 did not put deft. in a position to violate deliberately the terms of the will. The discretion was one to be reasonably exercised.—SEYMOUR v. PRATT (1925), 57 O. L. R. 278. **CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—D.

4683 i. *Out of what funds payable.*] Testator by his will directed his exors. "to pay to the legatees mentioned in the will of my late wife amounting in all to $20,000, which sum is represented by bonds in a "certain bank" in a parcel separate from my own securities":—*Held:* the legacies were to be treated as legacies from testator,

PART IV. SECT. 5, SUB-SECT. 5.—B. (d).

4827 iii. — — .] In determining the right of legatees to interest upon legacies the payment of which is postponed for a definite period by the will, the mere direction of such postponement will not of itself alter the date from which interest is to run, & testator's reasons for such postponement may be taken into consideration. If payment was delayed in order thereby to benefit a residuary legatee, then, in the absence of a direction to the contrary, no interest upon such postponed legacies would be payable before the expiration of the prescribed period. But where the postponement was intended primarily to enable the exors. to collect & realise the assets, the postponed legacies would carry interest from such a time after the end of the "exors.' year" as the exors. had in hand realised assets which could rightfully be applied to the payment of such legacies.—MONTGOMERY v. WILLIAMSON, [1926] N. Z. L. R. 39.—**N.Z.**

PART IV. SECT. 6, SUB-SECT. 1.—A.

an. *Law-agent's business books.*]—A law-agent directed his exors. to convey the residue of his estate to a residuary legatee. The exors. conveyed the residue, with the exception of deceased's business books, which they retained on the ground that it would be a breach of confidentiality towards deceased's clients if they were to hand them over. In an action by the residuary legatee for delivery of the books:—*Held:* pursuer was entitled to delivery.—ROBERTSON v. ROBERTSON'S EXECUTORS, [1925] S. C. 606.—**SCOT.**

Herbert v. I. R. Comrs., I. R. Comrs. v. Herbert (1925), 9 Tax Cas. 593.

5373. *Add. Annotations :*—**Consd.** *Re* Barratt, National Provincial Bank *v.* Barratt, [1925] Ch. 550 ; *Re* Corolli (1925), 69 Sol. Jo. 525. **Reld.** *Re* Brooker, Brooker *v.* Brooker (1926), 70 Sol. Jo. 526.

5411. *Add. Annotation :*—**Reld.** *Re* Jones, Johnson *v.* A.-G. (1925), 133 L. T. 601.

5423a. — —.]—By his will dated Jan. 27, 1913, testator appointed his wife M. & pltf. J. to be his exors., & after directing them to pay his debts & funeral & testamentary expenses, bequeathed all his estate & effects, real & personal, which he might die possessed of, to his wife M. absolutely. M. predeceased testator & died on Aug. 14, 1919. Testator died on Dec. 30, 1920, leaving real & personal property, but no heir-at-law or next of kin :—*Held :* there was in the will an obvious indication of an intention by testator that the exor. was not to take beneficially. He was in the position of a trustee, & on failure of a *cestui que trust* the beneficial interest in the personal estate vested in the Crown as *bona vacantia*.—*Re* JONES, JOHNSON *v.* A.-G., [1925] Ch. 340 ; 94 L. J. Ch. 341 ; 133 L. T. 601 ; 69 Sol. Jo. 460.

5440. *Add. Annotation :*—**Mentd.** *Re* Cassel, Public Trustee *v.* Mountbatten, [1926] Ch. 358.

5556. *Add. Annotation :*—**Mentd.** *Re* Hardyman, Teesdale *v.* McClintock, [1925] Ch. 287.

5594a. Direction in will for payment of "money secured on mortgage" out of residue—Balance of unpaid purchase-money.]—Testator, who at the date of his will in 1912 was the owner of several freehold properties, one of which was subject to a mtge. & of leasehold & other personal estate, gave & bequeathed all the freehold & leasehold properties of which he might die possessed upon trusts in favour of certain of his grandchildren & great-grandchildren, & the residue of his estate upon trust for sale & conversion ; he then directed that his trustees should out of the money thereby produced pay (*inter alia*) his debts & legacies, & should out of the residue of such money pay & discharge "any sum of money secured on mtge. of any of my freehold properties," & should stand possessed of the residue of such money in trust to divide same as therein mentioned. After the date of his will testator paid off the mtge. & took a reconveyance of the mortgaged property. Shortly before his death, in June & Oct 1917, testator contracted to purchase certain freehold properties in respect of which he paid deposits, leaving balances of the purchase-money owing to the respective vendors. On Dec. 23, 1917, testator made a final codicil, by which, after revoking the appointment of one of his exors. & bequeathing a legacy, he confirmed his will in all other respects. Testator died on Dec. 26, 1917, without having completed the purchases or paid the balances of the purchase-money, & shortly after his death his exors. completed the purchases & paid the balances of the purchase-money ; whereupon the question arose whether, as between the persons claiming under testator's will, those balances ought to be borne by the freehold properties of testator in respect of which same were payable, or ought to be satisfied out of his residuary estate :—*Held :* (1) inasmuch as a vendor's lien for unpaid purchase-money differs essentially from a mtge., even in the modern & wider sense of that term, upon the true construction of the will in the absence of any context enlarging the meaning of the term "mtge.," the balances of the unpaid purchase-money owing at testator's death were not "sums of money secured on mtge.," & no contrary intention was signified by the direction in the will to pay & discharge such sums out of testator's residuary estate, so as to exclude the operation of 1854 Act, which by virtue of 1867 Act, s. 2, extends to a vendor's lien for unpaid purchase-money ; with the result that the balances in question ought to be borne by & satisfied out of the freehold properties in respect of which same were payable, & the devisees thereof were not entitled to have those balances discharged out of testator's residuary estate ; (2) the confirmation of the will by the last codicil thereto, although executed after the mtge. on testator's freehold property had been paid off & after the vendor's lien had arisen, had not the effect of extending the meaning of the words "any sums of money secured on mtge. of any of my freehold & leasehold properties," so as to include the balances of unpaid purchase-money in question.—*Re* BEIRNSTEIN, BARNETT *v.* BEIRNSTEIN, [1925] Ch. 12 ; 94 L. J. Ch. 62 ; 132 L. T. 251 ; *sub nom. Re* BERNSTEIN, BARNETT *v.* BERNSTEIN, 69 Sol. Jo. 88.

5692. *Add. Annotation :*—**Mentd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

PART IV. SECT. 7, SUB-SECT. 1.—A. (a).

5425 *v.* — — —.]—T. by his will directed that his real property, not specifically devised, should be sold & all the remainder of his property realised. He also directed that his debts, funeral & testamentary expenses should be paid, an annuity provided for his sister, & that certain legacies, all charitable save one, should be paid :—*Held :* testator not having directed that the proceeds of sale of his realty & personalty should form a mixed fund, the primary fund out of which the debts, funeral & testamentary expenses, the annuity, & the legacies should be paid was the pure personalty, & the realty was only charged in aid of the pure personalty in so far as it proved insufficient for the payment of all charges, except the charitable legacies which lapsed as far as the pure personalty proved insufficient.—*Re* PATTON, CAVOSEY *v.* COPELAND, [1925] N. 206.—IR.

PART V. SECT. 2, SUB-SECT. 1.

80. *Before death duties paid—Where security for payment given.*]—R. *v.* CALEDONIAN INSURANCE CO., [1924] 2 D. L. R. 649 ; [1924] S. C. R. 207.—CAN.

PART V. SECT. 6, SUB-SECT. 1.

g (p. 602) l. —— *Not after estate properly administered & accounts passed.*]—*Re* OXENHAM, [1925] 2 D. L. R. 662.—CAN.

Part VI.—Liability of Representative.

6505. *Add. Annotation :*—**Mentd.** Burrell v. Leven (1926), 42 T. L. R. 407.

6526. *Add. Annotation :*—**Mentd.** Rawlinson v. Ames, [1925] Ch. 96.

6544. *Add. Annotation :*—**Mentd.** Richmond v. Savill, [1926] 2 K. B. 530.

6547. *Add. Annotation :—Generally,* **Mentd.** Pontypridd Grdns. v. Drew, [1926] 1 K. B. 567.

6600. *Add. Annotation :*— **Folld.** Firman v. Royal. [1925] 1 K. B. 681.

6602. *Add. Annotation :— Generally,* **Mentd.** Brocklebank v. R., [1925] 1 K. B. 52.

6610. *Add. Annotation :—Generally,* **Reld.** *Re* Field, Sanderson v. Young, [1925] Ch. 630.

6667a. —— **Non-repair by representative.**]—In debt for rent against an administrator, as assignee of the intestate, deft. pleaded, in discharge of his liability otherwise than as administrator, that the intestate underlet, for an unexpired term, to a tenant who had become insolvent & unable to pay rent ; that the premises were of less value than the rent, viz. of the value of a certain sum, part of which deft. had paid to pltf., & part towards the expense of a party-wall ; that, before the rent became due, deft. offered to surrender all his interest in the premises to pltf., who refused to accept them ; & that he had fully administered, etc. Replication ; that the premises were of more value than the sum mentioned in the plea, viz. of the value of the rent ; & that deft. did not offer to surrender, etc. Issue thereon : —*Held :* (1) the real value of the premises, as against deft., must be taken to be that which it would have been if he had not himself committed a breach of a covenant to repair in the original lease ; (2) the value, as between pltf. & deft., was not affected by the insolvency of the under-tenant, whose lease also contained a covenant to repair with a proviso of re-entry for breach & for non-payment of rent. HORNIDGE v. WILSON (1840), 11 Ad. & El. 645 ; 3 Per. & Dav. 641 ; 9 L. J. Q. B. 72 ; 113 E. R. 550.

Annotations :—As to (1) **Consd.** *Re* Bowes, Strathmore v. Vane, Norcliffe's Claim (1887), 37 Ch. D. 128. **Reld.** Rendall v. Andrew (1892), 61 L. J. Q. B. 630. *Generally,* **Mentd.** Hopwood v. Whaley (1848), 6 C. B. 744.

6723. *Add. Annotation :* **Consd.** Firman v. Royal, [1925] 1 K. B. 681.

6762. *Add. Annotation :* **Reld.** *Re* Field, Sanderson v. Young, [1925] Ch. 630.

6922. *Add. Annotation :* **Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

Part VIII.—Administration by Court.

8018. *Add. Annotation :*—**Reld.** Hunter v. Stadtische Hochseefischerei Gesselschaft, [1925] 2 K. B. 493.

8228. *Add. Annotation :*— **Mentd.** Grant v. Boos. [1926] A. C. 781.

8494. *Add. Annotation :*—**Mentd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

8750. *Add. Annotation :*—**Mentd.** *Re* Hardyman, Teesdale v. McClintock, [1925] Ch. 287.

8793. *Add. Annotation :—Generally,* **Mentd.** *Re* Beirnstein, Barnett v. Beirnstein, [1925] Ch. 12.

8802. *Add. Annotation : As to* (2) **Reld.** *In the Estate of* Plant, Wild v. Plant, [1926] P. 139.

8866. *Add. Annotation :*—**Reld.** *Re* Porter, Porter v. Porter, [1925] Ch. 746.

8891. *Add. Annotation :* **Consd.** *In the Estate of* Plant, Wild v. Plant, [1926] P. 139.

9014. *Add. Annotation : As to* (1) **Reld.** *In the Estate of* Plant, Wild v. Plant, [1926] P. 139.

PART VI. SECT. 2, SUB-SECT. 10.—D.

6595 i. —— *Matrimonial causes—Order for costs against husband.*]—A wife, whose husband had died after a decree *nisi* for divorce & before the date when it could have been made absolute :—*Held :* not entitled, there being no funds in ct., to costs against his estate.—JARVIS v. JARVIS, [1925] 2 D. L. R. 415 ; [1925] 1 W. W. R. 847.—CAN.

PART VI. SECT. 6, SUB-SECT. 5.—B.

sp. *Counsel's fee—For general work & advice—Not allowed.*]—*Re* DOUGH ESTATE, [1925] 1 D. L. R. 1140 ; [1925] 1 W. W. R. 776.—CAN.

PART VII. SECT. 1, SUB-SECT. 9.—A.

sq. *Liability on failure of appeal—Appeal without merit or substance.*]—The costs of an appeal without merit or substance taken by a personal representative :—*Held :* to be payable by such representative in his individual capacity.—STERLOFF v. FIRST NATIONAL BANK OF JOLIET, [1925] 2 W. W. R. 501.—CAN.

PART VII. SECT. 2, SUB-SECT. 5. B. (a).

st. *Appointment by foreign court.*]—An exor. or administrator cannot, as a general rule, be sued as such in the cts. of any State or country other than that in which he received his appointment.—GOODWIN v. MITCHELL, [1925] 3 W. W. R. 703.—CAN.

PART VII. SECT. 2, SUB-SECT. 8.—A.

s i. —— —— ——.]—The proper form of judgment against exors. or administrators in respect of a liability of deceased is for payment in due course of administration, unless there is on their part a distinct affirmative admission of assets sufficient to pay all creditors ; upon a judgment for the amount recovered to be paid in due course of administration it is improper to issue execution.—*Re* HEXTALL ESTATE, [1921] 1 W. W. R. 118 ; 56 D. L. R. 710.—CAN.

PART VIII. SECT. 5, SUB-SECT. 4.—C.

n i. —— *Disposal of assets.*]—Where a creditor or one of the next of kin institutes an administration suit against an exor. the institution of the action or the obtaining of a decree will not bring the doctrine of *lis pendens* into operation, & does not deprive the exor. of the power to dispose of assets, unless pltf. has obtained an order appointing a receiver or an injunction restraining the exor. from exercising the powers vested in him.—LEE LIM MA HOCK v. SAW MA HOAY (1923), 1 L. R. 2 Ran. 4.—IND.

PART VIII. SECT. 7, SUB-SECT. 2.—S. (b).

sw. *Insurance policy—Protected for payment of debts—Under Life Insurance Act, 1908, s. 65.*]—Where an insolvent estate includes the proceeds of an insurance policy protected for deceased's debts by the above Act, the policy moneys are liable for all testamentary expenses arising in the administration & realisation thereof ; funeral & the other testamentary expenses are born by the protected policy moneys & the remainder of the estate in proportion to their value.—MAITLAND v. PUBLIC TRUSTEE, [1924] N. Z. L. R. 840.—N.Z.

EXTRADITION AND FUGITIVE OFFENDERS.

Part I.—Extradition to Foreign Countries.

37. *Add. Annotation :—As to* (1) **Refd.** R. *v.* Beebe (1925), 133 L. T. 736.

126. *Add. Annotation :—As to* (1) **Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

127. *Add. Annotation :*—**Consd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

Part III.—Surrender between British Dominions inter se and the United Kingdom.

148. *Add. Annotation : As to* (1) **Apprvd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

PART I. SECT. 3, SUB-SECT. 3. C. (a) ii.

ss. *Foreign law—Mode of proof.*] UTAH STATE *v.* JONES (1925), 44 Can. Crim. Cas. 355; [1925] 3 W. W. R. 750.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.

sk. *Not absconding from jail.*]—JAIPAL BHAGAT *v.* R. (1921), I. L. R. 1 Pat. 57.—**IND.**

PART III. SECT. 2, SUB-SECT. 1.

sn. *Evidence required — Necessity for warrant.*]—Telegrams from the "police" of a Native State, which in addition to personal description of the fugitive & suggestions of his possible movements, merely alleged that he was wanted for embezzlement of money, do not constitute credible information or reasonable suspicion sufficient to justify his arrest without a warrant in British India.—SUBODH CHANDRA ROY CHOWDHRY *v.* R. (1924), I. L. R. 62 Calc. 319.—**IND.**

st. *Cancellation of warrant—Jurisdiction of High Court.*]—Although Extradition Act, 1903, s. 15, empowers the Govt. of India & the local Govt. to stay proceedings taken under chap. III of the Act & to direct any warrant to be cancelled & accused released, this does not oust the jurisdiction of the High Ct. to interfere where action has not been taken under a valid warrant.—JAIPAL BHAGAT *v.* R. (1921), I. L. R. 1 Pat. 57.—**IND.**

FACTORIES AND SHOPS.

Part III.—Accidents.

68. *Add. Annotation :—Generally,* **Reld.** Atkinson v. L. & N. E. Ry. (1925), 42 T. L. R. 79.

71. *Add. Annotation :*—**Reld.** Atkinson v. L. & N. E. Ry. (1925), 42 T. L. R. 79.

76a. —— **Machinery equally safe fenced or unfenced—Overhead shaft.**]—Resps. were the occupiers of a factory in which was a machine driven by a pulley fixed on a horizontal shaft, which formed part of the mill gearing. The driving belt slipped off the pulley & an employee of resps. attempted to put it back while the shaft was running & sustained injuries. The shaft & pulley were about thirteen feet from the floor & they were not fenced or guarded. In attempting to put on the belt the workman stood on a beam about seven feet from the floor, & was acting contrary to resps.' instructions. Resps. were summoned for not having the shaft fenced, but the justices, being of opinion that any fence would have been useless owing to the shaft being thirteen feet above the ground, dismissed the case : —*Held :* the finding of the justices was not equivalent to a finding that the shaft was "in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced," which was the requirement of 1901 Act, s. 10 (1) (c), & there would have been no evidence to support the latter finding. — ATKINSON v. LONDON & NORTH EASTERN RY. Co., [1926] 1 K. B. 313 ; 95 L. J. K. B. 266 ; 134 L. T. 217 ; 90 J. P. 17 ; 42 T. L. R. 70 ; 23 L. G. R. 702 ; 28 Cox, C. C. 112, D. C.

Part IV.—Dangerous and Unhealthy Industries.

129. *Add. Annotation :—Generally,* **Mentd.** Bennett v. Whitehead, [1926] 2 K. B. 380.

Part V.—Conditions as to Employment and Wages.

192. *Add. Annotation : —As to* (1) **Consd.** Rutherford v. Trust Houses, [1926] 1 K. B. 321.

193. *Add. Annotation :—As to* (2) **Distd.** Rutherford *v.* Trust Houses (1925), 89 J. P. Jo. 682.

206a. —— —— **Shops Act, 1913 (c. 24), s. 1.** Where the occupier of premises for the sale of refreshments, whether licensed for the sale of intoxicating liquor or not, elects under sect. 1 (1) of the above Act that instead of the provisions of Shops Act, 1912 (c. 3), s. 1, with regard to holidays, the provisions of sect. 1 (1) (a), (b), (c) & (d) of the above Act shall apply to shop assistants employed on the premises wholly or mainly in connection with the sale of intoxicating liquors or refreshments for consumption on the premises, he must be taken to elect to adopt the extended definition of shop assistant in sect. 1 (5) of the above Act, namely, that "shop assistant" includes "all persons wholly or mainly employed in any capacity at the premises in connection with the business there carried on," & he cannot afterwards be heard to say that any person so employed is not a shop assistant.— RUTHERFORD v. TRUST HOUSES, LTD., [1926] 1 K. B. 321 ; 95 L. J. K. B. 371 ; 134 L. T. 630 ; 90 J. P. 62 ; 42 T. L. R. 118 ; 24 L. G. R. 245 ; 28 Cox, C. C. 161, D. C.

236. *Add. Annotation :* **Reld.** Pritchard *v.* James Clay (Wellington) (1925), 42 T. L. R. 139.

261. *Add. Annotation :* **Reld.** Riversdale Mill Co. v. Hart (1926), 43 T. L. R. 73.

263. *Add. Annotations :* **Apld.** Jones v. Harris (1926), 43 T. L. R. 1. **Consd.** Riversdale Mill Co. v. Hart (1926), 43 T. L. R. 73.

264a. — —. Applt. was employed by resps. as a moulder of iron pipes upon piece work under an agreement by which applt. was to be paid 5½*d.* for a complete pipe free from defects, & other & smaller agreed prices for pipes defective in specified ways, *e.g.*, 5½*d.* for a pipe that was bent. These agreed prices were fixed at the time of applt.'s employment. No notices containing the terms of the agreement were kept by resps. as required by Truck Act, 1896 (c. 44), & no particulars in writing were supplied to applt. as required by that Act : *Held :* the agreement was a clear attempt to evade the above Act. The

PART I. SECT. 1, SUB-SECT. 1.

ss. *Flour mill.*)—*Held :* a "*factory*" within Factories Act, 1894.—SELBY v. BANNIGAN (1901), 3 S. A. L. R. 21.—**AUS.**

PART III. SECT. 1, SUB-SECT. 1.—A.

81 iii. —— —— ——.)—In an action by the widow of a deceased employee against his employer plff. alleged that deft. in contravention of Factories & Shops Act, 1912 (N.S.W.), neglected & omitted securely or at all to fence the dangerous parts of a machine whereby deceased was injured & died. The jury returned a general verdict for deft. : *Held :* in the particular circumstances there should be a new trial, there having been a misdirection on the question of contributory negligence upon which the jury might have acted. CONNELLY v. WATERLOO CARR CO., LTD. (1924), 34 C. L. R. 363.—**AUS.**

workman was employed to make pipes of full length & free from defects, & in paying the smaller prices for defective pipes resps. were making deductions " for or in respect of bad or negligent work or injury to the materials or other property of the employer."—PRITCHARD *v.* JAMES CLAY (WELLINGTON), LTD., [1926] 1 K. B. 238; 95 L. J. K. B. 107; 134 L. T. 244; 90 J. P. 15; 42 T. L. R. 139; 70 Sol. Jo. 266; 28 Cox, C. C. 122, D. C.

Annotation :—Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

264b. ——.]—By order dated Mar. 3, 1897, the Secretary of State exempted from the provisions of Truck Act, 1896 (c. 44), persons engaged in the weaving of cotton in the county of Lancashire. Resp., a weaver of cotton in Lancashire employed by applts., was negligent in performing certain work &, in accordance with a custom which had long existed in the Lancashire trade, the employers deducted a reasonable sum from the " standard list " rates of wages which had been agreed between the employers' & workers' organisations, as the remuneration for good, merchantable cloth, & paid her the balance as her wages :—*Held :* this deduction was not illegal as being in contravention of the Truck Acts.—RIVERSDALE MILL CO., LTD. *v.* HART (1926), 43 T. L. R. 73, D. C.

276. *Add. Annotation :*—**Consd.** Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

277. *Add. Annotation :*—**Consd.** Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

Part VI.—Administration and Penalties.

299. *Add. Annotation :*—**Refd.** Atkinson *v.* L. & N. E. Ry. (1925), 42 T. L. R. 79.

FAMILY ARRANGEMENTS.

Part II.—Validity and Effect.

58. *Add. Annotation :*—**Mentd.** Jagger v. Jagger, [1926] P. 93.

114. *Add. Annotation :*—**Mentd.** *Re* Barratt, National Provincial Bank v. Barratt, [1925] Ch. 550.

164. *Add. Annotation :* **Reld.** Parr v. A.-G., [1920] A. C. 239.

FERRIES.

Part I.—Definition and Nature of Ferries.

8. For the paragraph in the original volume substitute the following paragraph :—

—.]—Defts., under a statute of 1701, built a toll-bridge in place of an ancient ferry on a public highway, & also approaches which by the Act were to be considered as part & parcel of the bridge. Pltfs., the county council, owned land adjoining one of the approaches & built a school on it. Defts. denied pltfs.' right to free access to the school over the approach :—*Held:* as the old highway consisted of the approaches to the ferry plus the passage across the river, & the substituted highway consisted of the approaches to the bridge plus the bridge, & as the old approaches were highways to which owners would be entitled to access, the substituted approaches were highways by which adjoining owners had similar rights of access, & defts.' claim was ill founded.—YORKSHIRE, EAST RIDING, COUNTY COUNCIL *v.* SELBY BRIDGE CO. OF PROPRIETORS, [1925] Ch. 841; 95 L. J. Ch. 86; 133 L. T. 628; 41 T. L. R. 602; 69 Sol. Jo. 775; 23 L. G. R. 547.

13a. **Persons able to cross on foot at low water.**]—(1) *Held:* a franchise ferry between South Benfleet & Canvey Island had been granted to pltfs.' predecessors in title.

(2) The case is unique in one respect because at low water the tidal creek can be traversed on foot (ROMER, J.).—LAYZELL *v.* THOMPSON (1926), 43 T. L. R. 58.

Part II.—Creation and Transfer of Ferries.

34. *Add. Annotation :—As to* (3) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

35. *Add. Annotation :* **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

35a. —.]—LAYZELL *v.* THOMPSON, No. 13a, *ante*.

51. *Add. Annotation :—As to* (2) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

Part III.—Rights, Duties and Liabilities of Ferry Owner.

65. *Add. Annotation :* **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

66. *Add. Annotations :—Generally*, **Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254; Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841.

Part IV.—Disturbance of Ferries and Remedies Therefor.

150. *Add. Annotation : Generally*, **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

151a. —.]—LAYZELL *v.* THOMPSON, No. 13a, *ante*.

PART IV. SECT. 2, SUB-SECT. 3.—B.

sb. *Proof of acquisition of termini sufficient—Proof of origin unnecessary.*]—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry :—*Held:* conveyances from the owners of the lands on either side of the ferry of their whole rights gave pursuers, in the absence of any rival title in favour of defender, a *primâ facie* title to sue, without the necessity of averring on what their author's titles were founded.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* M'DONALD, [1924] S. C. 835.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 4.

sd. *Right of ferry exercised by others.*]—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry :—*Held:* a defence that pursuers had not exercised an exclusive right of ferry, in respect that other persons had, without protest, ferried passengers for hire, was irrelevant.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* M'DONALD, [1924] S. C. 835.—**SCOT.**

FISHERIES.

Part II.—Public Fisheries.

29. *Add. Annotation :*—*As to* (2) **Reld.** The Fagernes, [1920] P. 185.

Part III.—Private Fisheries.

176. *Add. Annotation :*—**Reld.** Abrahams v. Mac Fisheries, [1925] 2 K. B. 18.

FOOD AND DRUGS.

Part II.—Adulteration and Impoverishment.

135. *Add. Citations* :—23 L. G. R. 15; 27 Cox, C. C. 672.

140. *Add. Citations* :—23 L. G. R. 22; 27 Cox, C. C. 678, D. C.

Add. Annotation :—*As to* (2) **Reld.** Preston *v.* Grant (1924), 94 L. J. K. B. 125.

174. *Add. Annotation* :—**Folld.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

187. After this case insert "**Addition of colouring matter to milk.**]—*See* No. 218a, *post*."

218a. —— **Milk adulterated with colouring matter.**] —The defence that he purchased the milk with a written warranty is not available to a vendor of milk adulterated by the addition of colouring matter contrary to Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 4, which neither includes such a defence nor contains any provision that it is to be read with any Act containing such a defence.—REEMAN *v.* KNAPP (1925), 134 L. T. 224; 90 J. P. 7; 42 T. L. R. 131; 24 L. G. R. 42; 28 Cox, C. C. 117, D. C.

283. *Add. Annotation* :—*As to* (3) **Reld.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

Part III.—Sale of Unwholesome Food.

358. *Add. Annotation* :—**Reld.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

Part V.—Particular Articles of Food.

414a. **Exposure for sale What amounts to.**]—A baker was delivering bread from an open car; after completing his round, while he was on his way back to the bakehouse, he was stopped by an inspector, who weighed the remaining loaves & found a deficiency:—*Held*: there was both an offering & an exposure for sale of the bread left in the car, since, when the journey started, it was uncertain which, if any, loaves would remain unsold, & they were taken for the purpose of being sold if customers required them.—KEATING *v.* HOLWOOD (1926), 135 L. T. 29; 90 J. P. 141; 42 T. L. R. 472; 21 L. G. R. 362; 28 Cox, C. C. 198, D. C.

447. *Add. Annotation* :—**Reld.** Preston *v.* Grant, [1925] 1 K. B. 177.

465. *Add. Citation* :—27 Cox, C. C. 637.

495. *Add. Annotation* :—**Reld.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

508. *Add. Citation* :—28 Cox, C. C. 7.

PART II. SECT. 3, SUB-SECT. 3.—C. (b) iv.

142 l. —— *Notice not seen by purchaser time of proof.*]—Where an article of food exposed for sale bears a label indicating that it does not conform to the statutory standard of genuineness:—*Held*: the seller must prove that the contents of the label were brought to the notice of the purchaser.—PATTERSON *v.* FINDLAY, [1925] S. C. (J.) 53.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 4.—B.

s l. —— *Words descriptive of article sold.*]—Where margarine was sold in a wrapper which bore, in large type, the words "Charmo Margarine," below which, in smaller type, were the words "containing a small quantity of butter," & the name "Charmo" was a duly approved addition to the word "margarine," & the seller, convicted under Butter & Margarine Act, 1907, s. 8, appealed:—*Held*: the words "containing a small quantity of butter," were merely descriptive of the article sold, & did not form part of a fancy or descriptive name which had not been approved; & conviction quashed.—SOMERVILLE & BARR, LTD. *v.* CHALMERS, [1925] S. C. (J.) 70.—**SCOT.**

PART V. SECT. 4, SUB-SECT. 3.

506 iii. —— ——]—A dairyman was convicted of selling sweet milk which was not genuine, in respect that it contained less than 3 per cent. of milk fat. The alleged deficiency in fat was established, but it was also proved that the milk had not been tampered with in any way, the deficiency being due to the milk having stood for some time in the can, & to the sample having been drawn from a tap at the bottom after the cream had risen. No evidence was led as to the possibility or impossibility of redistributing the constituents of the milk in the can by stirring or otherwise:—*Held*: accused had failed to rebut the statutory presumption that the milk was not genuine, & the conviction was right.—M'CALLUM *v.* BROOKS, [1926] S. C. (J.) 39.—**SCOT.**

Part VI.—Control in Wartime.

519. *Add. Annotation :*—**Folld.** Brocklebank v. R., [1925] 1 K. B. 52.

558a. ——————.]—The Food Controller, acting under powers conferred by Defence of the Realm Regulations, reg. 2B, requisitioned all the bacon landed on or before a certain specified date, & at the same time, acting under powers conferred by reg. 2F. requisitioned all bacon landed after such date : —*Held :* in assessing the compensation to be paid for the bacon requisitioned under reg. 2F. the arbitrator was entitled to take into consideration the fact that the Food Controller was already in possession of large stocks of bacon requisitioned under reg. 2B. —Swift & Co. v. Board of Trade, [1926] 2 K. B. 131 : 95 L. J. K. B. 831 ; 135 L. T. 391 ; 42 T. L. R. 461, C. A. ; *previous proceedings*, [1925] A. C. 520, H. L.

572. *Add. Annotation :*—**Refd.** R. v. Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.

FRAUDULENT AND VOIDABLE CONVEYANCES.

Part I.—Conveyances Impeachable by Creditors under Statute.

126. *Add. Annotation :* **Apld.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

133. *Add. Annotation :—As to* (4) **Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

252. *Add. Annotation :—***Reld.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

293. *Add. Annotation :* **Mentd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

377. *Add. Annotation :* **Reld.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

395. *Add. Annotation :* **Consd.** Jagger *v.* Jagger, [1926] P. 93.

396. *Add. Annotation :* **Consd.** Jagger *v.* Jagger, [1926] P. 93.

422a. ——.]—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* THE CO., No. 428a, *post.*

428a. —— **Issue of debentures to one creditor—Issue postponed for benefit of company.**]—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.

If, as appears to be established by the authorities, a present fraudulent intention to prefer one creditor over the others is not sufficient under the statute to avoid a conveyance to that creditor, unless the debtor is himself in some way benefited by the conveyance, I am unable to see how the conveyance is avoided merely because the debtor always had the intention to prefer the creditor at some time or another (ROMER, J.).—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* THE CO., [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

PART I. SECT. 2, SUB-SECT. 1.

a 1. ——.]—Deft. provided a house for her father in which to live rent free for the rest of his life, in consideration of which he transferred a business block to her with the object of securing her for the rental value of the house & the cost of upkeep. Execution creditors of the father attacked the transfer under 13 Eliz. c. 5, & Fraudulent Preferences Act, R. S. S., 1920 (c. 204): —*Held:* deft. held the title to the business block as trustee for her father, subject to a charge in her favour for the rent & upkeep of the house, & subject to deft.'s lien for such amount on her father's equity the property should be available for his creditors.—COLONIAL INVESTMENT & LOAN CO. *v.* HUNT, [1925] 4 D. L. R. 108; [1925] 3 W. W. R. 157. **CAN.**

d 1. ——.] KEENLEYSIDE *v.* PARTRIDGE, [1925] 3 D. L. R. 961.—**CAN.**

n 1. —— *Saskatchewan.*] 13 Eliz. c. 5, is in force in Saskatchewan.—BANK OF MONTREAL *v.* REID, [1925] 3 D. L. R. 125; [1925] 2 W. W. R. 169; 19 Sask. L. R. 423. **CAN.**

PART I. SECT. 4, SUB-SECT. 2.—C.

t 1. ——.]—The transfer of his homestead from a husband to his wife, when he was insolvent & in order to prevent his creditors from satisfying their claims therefrom: —*Held:* fraudulent. BARRETT *v.* BARON, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448. **CAN.**

a 1. —— *Husband trustee for wife of property conveyed.*]—GRAY *v.* FORD, [1925] 1 W. W. R. 943; 34 B. C. R. 517.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.—A.

264 iii. ——.]—GALIBERT *v.* SOCIÉTÉ D'ADMINISTRATION GÉNÉRALE & BANQUE NATIONALE & CIE. GÉNÉRAL D'ENTREPRISES PUBLIQUES, [1925] 3 D. L. R. 1206; [1925] S. C. R. 683.—**CAN.**

264 iv. ——.]—CUMMINGS & ELLIS *v.* O'FLYNN (1924), 31 B. C. R. 275.—**CAN.**

264 v. ——.]—A sale by a son to his father, made when the son was in insolvent circumstances & with the common intent & effect of giving a preference: —*Held:* void.—HUNTER *v.* LAWRIE, [1925] 1 D. L. R. 658; [1925] 1 W. W. R. 411; 35 Man. L. R. 126. **CAN.**

PART I. SECT. 4, SUB-SECT. 7.

sl. *Conveyance to wife—Onus of proof—Discharge of onus.*]—If land is transferred by a husband to his wife, who *bonâ fide* works the land on her own account, a person alleging that the whole transaction, including the working of the land, is colourable only must satisfy the ct. by showing facts & circumstances which go beyond raising a mere suspicion.—JOHNSTONE LUMBER CO. *v.* HAGER, [1924] 1 D. L. R. 693; 1 W. W. R. 389; 20 Alta. L. R. 286.—**CAN.**

PART I. SECT. 4, SUB-SECT. 11.

418 xiii. ——.] SHAVER *v.* GOLDMAN, [1925] 2 D. L. R. 1216.—**CAN.**

aj. *Mortgage to obtain loan to pay creditor—Presumption that mortgage void.*]—MILLER *v.* OSIER, [1925] 4 D. L. R. 692.—**CAN.**

ak. *What constitutes preference—Security given to creditor—Debtor insolvent.*]—W., secretary-treasurer of pltf. municipality, misappropriated funds. At his request deft. sent him a cheque to pay off a mtge., & in repayment sent deft. his own cheque, which was refused by the bank. He also received from deft. a cheque to purchase an interest in land, which he deposited to the credit of the municipality. He notified deft. & assigned him securities to cover the two cheques. Within sixty days of the assignments pltf. began action to set them aside as preferential:—*Held:* under Assignments Act, R. S. S. 1909, then in force, the assignments to deft. were void as against pltf. & should be set aside.—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY (1922), 66 D. L. R. 660; 15 Sask. L. R. 40; [1921] 3 W. W. R. 658.—**CAN.**

al. *Who is a "creditor"—Agent making advance out of funds of principal—No pressure by principal for security.*]—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY (1922), 66 D. L. R. 660; 15 Sask. L. R. 40; [1921] 3 W. W. R. 658.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.

o. Delete this case.

t 1. —— *Land transferred to wife—Crops raised by wife.*]—If land is transferred by a husband to his wife, who *bonâ fide* works the land on her own account, even if the transfer is one that as against creditors can be set aside, the wife is entitled to the crops raised under her operations.—JOHNSTONE LUMBER CO. *v.* HAGER, [1924] 1 D. L. R. 693; 1 W. W. R. 389; 20 Alta. L. R. 286.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D. (a).

sm. *Secured creditor.*]—If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204).—BARRETT *v.* BARON, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D. (c).

sp. *Judgment for alimony.*]—Where a wife, having obtained a judgment for permanent alimony, brought an action to have a release executed by the husband set aside & the transaction declared preferential, fraudulent, & void, under Fraudulent Conveyances Act, R. S. O., 1914 (c. 105):—*Held:* even if pltf. was not her husband's creditor she could nevertheless bring an action, for under sect. 3 "creditors & others" were protected.—SHEPHARD *v.* SHEPHARD, [1925] 2 D. L. R. 897;

Part II.—Conveyances Impeachable by Subsequent Purchasers under Statute.

547. *Add. Annotation:*—**Mentd.** Cayzer, Irvine v. Board of Trade, [1927] 1 K. B. 269.

56 O. L. R. 555; *affg.*, [1924] 3 D. L. R. 566.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.—D.

o (p. 223) **i.** ——— ———.]—In an action to set aside as fraudulent against creditors a transfer between sisters:—*Held:* the corroborative evidence necessary to meet the *prima facie* case which pltf. established by showing a transfer between near relatives in circumstances of suspicion, had been supplied.—Lysnquist v. Pula, [1925] 3 D. L. R. 84; [1925] 1 W. W. R. 831.—**CAN.**

PART III. SECT. 1.

p i. ——— *Grant in consideration of maintenance for life.*]—A woman, 69 years old, transferred land to defts. in consideration of her maintenance for life, which transfer the Supreme Ct. of Tasmania on her death set aside as procured by undue influence:—*Held:* the transaction was properly set aside.—Watkins v. Coombes (1922), 30 C. L. R. 180. **AUS.**

561. *Add. Annotation:* **Mentd.** Jones v. Waring & Gillow, [1926] A. C. 670.

FRIENDLY SOCIETIES.

Part III.—Unregistered Societies.

17. *Add. Annotation :—As to* (3) **Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

Part XIII.—Membership.

133. *Add. Annotation :*—**Apld.** R. *v.* Lancashire JJ., *Ex p.* Tyrer, [1925] 1 K. B. 200.

Part XIX.—Offences, Penalties and Proceedings.

322. *Add. Annotation :*—**Consd.** Fishwick *v.* Gyani, [1925] 1 K. B. 617.

Part XXII.—Dissolution.

430. *Add. Annotation :* **Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

PART XX. SECT. 3.

ss. *Right to secede.*] In the absence of statutory provisions there is no power in a branch lodge of a friendly society to secede from the order to which it belongs, unless the power is expressly conferred by the rules of the society. *Semble :* even if the rules give a right to secede, there is no practical method of doing so, unless machinery is provided for the purpose. INDEPENDENT ORDER OF ODDFELLOWS *v.* INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE No. 11, [1901-3] S. A. L. R. 62.—**AUS.**

sd. *Effect of secession—On property & funds.*] A mere right to secede does not confer a power in the seceding lodge to take away the funds constituted under the rules of the order. A rule of a friendly society providing that a lodge which is expelled shall forfeit its property to the ruling authority of the society is not *ultra vires.*—INDEPENDENT ORDER OF ODDFELLOWS *v.* INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE No. 11, [1901-3] S. A. L. R. 62.—**AUS.**

sf. *Secession by Scottish branch of English society—Refusal to grant certificate of secession—Jurisdiction of Scottish courts.*]—The Scottish branch of a friendly society, whose registered office was in England but whose rules had been recorded in Scotland, resolved to secede from the parent body, & applied to the secretary of the society for a certificate of secession in order that the branch might be registered as a separate society in Scotland. The certificate having been refused, the branch brought a petition, under Ct. of Session (Scotland) Act, 1868 (c. 100), s. 91, for an order on the society to grant a certificate :—*Held :* the ct. had jurisdiction to entertain the petition, & procedure by way of a summary petition under sect. 91 was a convenient & practical method of invoking the aid of the ct.—SONS OF TEMPERANCE FRIENDLY SOCIETY, [1926] S. C. 418.—**SCOT.**

GAME.

Part IV.—Persons having Rights over Game.

76. *Add. Annotation* :—**Reld.** Swayne v. Howells (1926), 43 T. L. R. 11.

Part VII.—Gamekeepers.

354. *Add. Annotation* :—**Reld.** Barnard *v.* Evans, [1925] 2 K. B. 794.

GAMING AND WAGERING.

Part I.—Gaming and Wagering Contracts Generally.

1. *Add. Citation :*—69 Sol. Jo. 824.

13. *Add. Annotations :*—**Folld.** Barnett *v.* Sanker (1925), 41 T. L. R. 660. **Reld.** Cooper *v.* Stubbs, [1925] 2 K. B. 753.

5a. **Agreement to refer betting disputes to arbitration.**]—Where an agreement to refer betting disputes to a particular arbitrator is an integral part of the bargain by which the bets are made, the agreement to refer is itself a contract by way of gaming or wagering & is unenforceable.—JOE LEE, LTD. *v.* DALMENY (LORD), SAME *v.* TATTERSALL'S COMMITTEE (1926), 43 T. L. R. 119.

5. *Add. Annotation :*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

8. *Add. Annotations :* **Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407. **Reld.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

4. *Add. Annotation :* **Distd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

4a. ——— .]—Pltf. backed a horse with deft. for £10 & the horse won the race. There was subsequently a dispute as to whether the result of the betting was payable at 100 to 1 or at 33 to 1. The parties agreed to refer the question to Tattersall's Committee. The Committee decided that the amount payable was £1,000, & that it was to be paid within seven days. In an action to recover the £1,000 pltf. alleged that deft. had agreed to abide by the decision of the Committee :—*Held :* as the parties only referred to Tattersall's Committee the question whether the bet was at 100 to 1 or at 33 to 1, & as there was no further agreement by deft. for good consideration to pay such sum as the Committee might find to be payable, the action failed.—HYDE *v.* TYLER (1926), 42 T. L. R. 652 ; 70 Sol. Jo. 856, C. A.

70. *Add. Annotation :*—**Apld.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

70a. ——— **Agreement to compromise action.**]—A mere agreement to compromise an action brought for a gaming debt is not sufficient consideration on which to found an action on the agreement.—BURRELL & SON *v.* LEVEN (1926), 42 T. L. R. 407.

171. *Add. Annotation :*—**Mentd.** Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269.

205a. ——— ———.]—Pltf. & other players of chemin de fer took it in turn to be croupier or banker. Deft., one of the players, bought counters to stake, & at the end of the game, having lost £500, he gave a cheque for that amount to pltf. in payment of what he had lost to pltf. &/or other persons. In an action on the cheque :—*Held :* a payment to a winner at gaming, or to a person who accepted payment for winners, in the form of a cheque was void & unenforceable, & the action failed.—RICHARDSON *v.* MONCRIEFFE (1926), 43 T. L. R. 32.

224. *Add. Annotation :*—*As to* (1) **Reld.** *Re* Wilson, *Ex p.* Salaman *v.* Keith, Prowse (1925), 133 L. T. 814.

226. *Add. Annotation :*—**Reld.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

229. *Add. Annotation :*—**Reld.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

Part II.—Games, Gaming and Gaming Houses.

30. *Add. Annotation :* *As to* (1) **Reld.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

261. *Add. Annotation :*—**Reld.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

PART I. SECT. 1.

aa. *Agreement for payment of differences—Arising out of wagering contract.*]—Where a forward contract for the purchase & sale of goods is void on the ground of wagering under Contract Act, s. 30, a subsequent cross contract, as a result of which the differences payable under the original wagering contract are settled, is void under Bombay Act III. 1865, s. 1.—JIVANCHAND GAMBHIRMAL, ETC. *v.* LAXMINARAYAN GANESHRAM (1925), 27 L. R. 49 Bom. 680.—IND.

PART I. SECT. 6, SUB-SECT. 1.

181 iii. ———.]—Where during a game of dice cheques are given by one player to another player for money advanced to enable the former to continue the game, such cheques will be deemed to have been given for an illegal consideration.

If in an action brought on such cheques the evidence discloses the illegal consideration the trial judge should dismiss the action, even though the illegality has not been pleaded.—GOODWIN *v.* MORRISON, [1925] 2 D. L. R. 1203 ; [1925] 2 W. W. R. 75.—CAN.

PART II. SECT. 2, SUB-SECT. 1.

234 i. *Proprietary club—Need not be open to public.*]—A common gaming house is one in which a large number of persons are invited habitually to congregate for the purpose of gaming, & it makes no difference that its use is restricted to subscribers & members of a club, & it is not open to all persons desirous of using it.—*Re* CHINNIAH (1923), I. L. R. 47 Mad. 426.—IND.

e i. ——— ———.]—On a prosecution for keeping a common gaming house :—*Held :* premises on which were found cards, poker chips, dice, a round cloth-covered table & a "punch board," were "provided with any means or contrivance for unlawful betting or gaming" within Criminal Code, s. 986.—R. *v.* COY, (1925) 3 W. W. R. 538 ; 44 Can. Crim. Cas. 119.—CAN.

af. Under Gaming Act, 1908, *s.* 4.]—WEATHERED *v.* FITZGIBBON, [1925] N. Z. L. R. 331.—N.Z.

PART II. SECT. 2, SUB-SECT. 2.

h i. ——— ——— *Acting as "banker" but not residing in common gaming house.*]—*Held :* not to justify a conviction as keeper of the house.—R. *v.* MARK (1924), 43 Can. Crim. Cas. 368.—CAN.

h ii. ——— ——— *Under Gaming Act*, 1908, *s.* 4.]—WEATHERED *v.* FITZGIBBON, [1925] N. Z. L. R. 331.—N.Z.

PART II. SECT. 2, SUB-SECT. 3.

g i. ———.]—Conviction for allowing gambling on premises for which there was a retail liquor licence quashed, the holder of the licence not having knowledge of the gambling.—R. *v.* WHELAN (1908), 9 W. L. R. 421.—CAN.

Part III.—Betting and Betting Houses.

10. After this case add "**Agreement to collect betting debts—Contrary to public policy.**]—*See* ACTION, p. 9, No. 599a, *ante*."

58. *Add. Annotation :—Generally*, **Refd.** Schneiders *v.* Abrahams, [1925] 1 K. B. 301.

15a. —— ——.]—Applts. were the responsible proprietors of a four-page weekly newspaper, which was sold at 6*d.* a copy, & which had in winter a weekly circulation of over 32,000 copies. The newspaper contained what was called a "Free Football Competition" with a coupon giving particulars of future football matches & a column for the competitors to fill in their forecast of the results, a prize of £150 being offered for a correct forecast of all the results & a prize of £100 for a correct forecast of nine results, but no money was to be sent with the coupons. Applts. were summoned for unlawfully publishing a coupon of a ready-money football betting business contrary to sect. 1 of the above Act. The justices found that the majority of the persons who bought the newspaper did so for the sake of the coupon, & that applts. had circulated coupons of a ready-money football betting business, & they convicted applts. :—*Held :* the case was typical of the mischief aimed at by the Act, & the justices' decision must be affirmed.—SUTTLE *v.* CRESSWELL, [1926] 1 K. B. 264; 95 L. J. K. B. 367; 134 L. T. 144; 90 J. P. 3; 42 T. L. R. 75; 23 L. G. R. 695; 28 Cox, C. C. 94, D. C.

Part IV.—Lotteries.

34. *Add. Annotation :*—**Refd.** Kerslake *v.* Knight (1925), 133 L. T. 606.

43. *Add. Annotation :*—**Refd.** Kerslake *v.* Knight (1925), 133 L. T. 606.

449. *Add. Citations :* 94 L. J. K. B. 919; 133 L. T. 606; 89 J. P. 142; 23 L. G. R. 574; 28 Cox, C. C. 27.

PART III. SECT. 1.

310 1. *Betting or betting business—ol illegal ipso facto.*]—Neither in dia nor in England has the legislature one so far as to enact in express terms iat betting transactions are illegal, it it is clear that in both countries e legislature regards it as undesirable the public interest that any assistnce should be afforded by cts. of law enforce obligations which have been eated in connection with betting wagering transactions.—MITCHELL TENNENT (1925), I. L. R. 52 Calc. 77.—**IND.**

ART III. SECT. 2, SUB-SECT. 1.

sk. *Pathway—Sole access to three uses.*]—A pathway leading from blic land to three separate dwelling-uses, to which it provided the only eans of access, was entered from the ne through a gate which was never cked :—*Held :* the pathway was a public passage," & a "street" thin Street Betting Act, 1906 (c. 43). 1.—MACKIE *v.* CROMBIE, [1926] C. (J.) 29.—**SCOT.**

RT III. SECT. 4, SUB-SECT. 1.—A.

t (p. 440) l. —— —— ——.]—here certain persons rented an enosure, part of a larger enclosure utting on a public road, & invited ers to come there & make bets :—*ld :* any person found betting there s rightly convicted of gambling in a blic place.—R. *v.* TULSHI DAS 924), I. L. R. 46 All. 787.—**IND.**

RT III. SECT. 4, SUB-SECT. 1.—B.

l. ——.]—Deft. assocn. was incorrated as a co. by letters patent, ich were amended by adding certain jects & purposes, viz., to encourage se-racing, to construct, maintain, operate race-courses, & other like jects & purposes. The co. established a race-course & held race-etings, at which betting on the races s permitted, & was convicted under minal Code, ss. 228, 235, of the nces of keeping a common betting house, & recording & registering bets, etc. :—*Held :* the co. was not protected by sect. 235 (2).—R. *v.* LONG BRANCH RACING ASSOCN., [1925] 2 D. L. R. 46; 43 Can. Crim. Cas. 283; 56 O. L. R. 303.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.—A.

363 1. *What persons liable to penalties—Persons "keeping"—Servant in sole charge.*]—Any person, whether servant or agent, or on his own account, who has for the time being the exclusive charge of premises, & who uses those premises for the purpose of betting, is guilty of keeping or using the premises as a common gaming house under Gaming Act, 1908, s. 4, even though he is not the owner, & the owner is ignorant of the use to which the premises were put, & though the premises so used are only part of the premises of the owner.—DAVIS *v.* NUTTALL, [1924] N. Z. L. R. 65.—**N.Z.**

PART III. SECT. 6.

415 1. "*Printing or knowingly circulating coupons*"—*Construction of Football Betting Act*, 1920 (*c.* 52), *ss.* 1, 2.]—Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. Apart from the coupons & matters connected therewith the paper contained very little reading matter, & the majority of purchasers bought it for the sake of the coupons. The commission agents were convicted of knowingly printing & circulating circulars or coupons of a ready-money football betting business :—*Held :* the paper was a circular or coupon of the business of applts., & conviction sustained.—JAMESON *v.* SINCLAIR, [1925] S. C. (J.) 1.—**SCOT.**

an. "*Ready-money football betting business*"—*Newsagents settling with publishers monthly.*]—Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. It was issued to wholesale newsagents, & distributed by them to retail newsagents, who sold it to the public. The wholesale & retail newsagents settled their accounts weekly; the wholesale newsagents ran monthly accounts with the commission agents, who paid the prize-winners. The prize money was paid, although the monthly accounts had not been settled; *Held*, there was evidence on which the magistrates might hold that applts.' business was a ready-money football betting business.—JAMESON *v.* SINCLAIR, [1925] S. C. (J.) 1.—**SCOT.**

PART III. SECT. 7.

c l. —— —— ——] PATTERSON *v.* MACPHERSON, [1924] S. C. (J.) 38.—**SCOT.**

c ll. —— —— —— *Right to open closed envelopes.*] *Held :* the special warrant under Betting Act, 1853, s. 11, entitled the police to open postal or other communications found on the premises, although contained in closed envelopes, for the purpose of ascertaining whether they contained documents relating to betting. STRATHERN *v.* BENSON, [1925] S. C. (J.) 49.—**SCOT.**

PART IV. SECT. 1.

b (p. 440) l. —— *Conducting "pull tickets."*] *Held :* a violation of Criminal Code, s. 236 (b) (d). R. *v.* A. D. MURRAY TABERNACLE, LTD., [1925] 3 W. W. R. 181; 44 Can. Crim. Cas. 346.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 1.

aq. *Sale of gambling device.*] A violation of Criminal Code, s. 236 (b), may be proved, although there is no evidence that at the time of the sale of the device in question, *e.g.*, a punch board, there was a conscious arrangement between the buyer & seller that some property would be disposed of by chance by means of the device. The essential inquiry is, what is the purpose or known intended use of the device.—R. *v.* HEINE, [1926] 1 D. L. R. 60; [1925] 3 W. W. R. 724.—**CAN.**

Part VI.—Competitions.

496. *Add. Annotation :*—**Distd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

497. *Add. Annotation :* —**Reld.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

498. *Add. Annotation :*—**Apld.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

501. *Add. Annotation :*—**Reld.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

502. *Add. Annotation :*—*As to* (3) **Reld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

GAS.

Part II.—Lands and Works.

10. *Add. Citations* :—94 L. J. Ch. 382; 133 L. T. 565; 89 J. P. 177; 23 L. G. R. 525.

Part III.—Supply of Gas.

48. *Add. Annotation* :— **Mentd.** *Re* Quintin Dick, Cloncurry v. Fenton, [1926] Ch. 902.

Part VIII.—Gas Supply in the Metropolis.

114. *Add. Annotation* :— **Consd.** A.-G. v. County of London Electric Supply Co., [1926] Ch. 512.

PART III. SECT. 2, SUB-SECT. 6.

sa. *Refusal to pay increased rates—Right to cut off gas.*]—*Held*: Natural Gas Conservation Acts, 1921 (c. 17), & 1923 (c. 23), were valid.—SANDWICH v. UNION NATURAL GAS CO. (ONT.), [1925] 4 D. L. R. 795; *affg.*, [1925] 2 D. L. R. 707; 56 O. L. R. 399.—CAN.

PART IV. SECT. 2, SUB-SECT. 1.

621. *Gas main—Damage by subsidence.*]—A gas co. opened a street in a city & laid down a gas main. The city corpn. constructed an underground drain, &, by reason of a subsidence of the drain, the gas main was broken. The co. opened the street & repaired the gas main & the corpn. reinstated the drain & roadway. In an action by which the corpn. sought to recover from the co. the cost of such reinstatement, the co. by counterclaim sought to recover from the corpn. the cost of repairing the gas main:—*Held*, the liability of the corpn. for the damage to the gas main depended upon negligence in the exercise of its statutory powers causing unnecessary damage to the co., & the onus of proving such negligence had not been discharged by the co.—METROPOLITAN GAS CO. v. MELBOURNE CORPN., [1925] V. L. R. 139; 35 C. L. R. 186; 3 Argus L. R. 25.—AUS.

GIFTS.

Part II.—Capacity to Give and to Receive Gifts.

20. *Add. Annotation :*—**Reld.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691.

Part III.—Gifts inter vivos.

26a. Gift for public purposes—Whether formalities for compulsory acquisition apply.] — The formalities required for the exercise of the compulsory powers given by statute for taking land for public improvements have no application to the case of a voluntary gift of land.—MICHAUD *v.* MONTREAL (CITY) (1923), 92 L. J. P. C. 161; 129 L. T. 417, P. C.

171. *Add. Annotation :* **Consd.** *Re* Wilkinson, Page v. Public Trustee, [1926] Ch. 842.

172. *Add. Annotation :*—**Consd.** Cohen v. Sellar, [1926] 1 K. B. 536.

173. *Add. Annotation :* **Consd.** Cohen v. Sellar, [1926] 1 K. B. 536.

174. *Add. Annotation :* **Consd.** Cohen v. Sellar, [1926] 1 K. B. 536.

175. *Add. Annotation :* **Consd.** Cohen v. Sellar, [1926] 1 K. B. 536.

175a. —— —— ——.]—(1) If a man who has promised to marry a woman, & has given to her an engagement ring in contemplation of marriage, refuses without legal justification to carry out his promise, he cannot demand the return of the engagement ring.

(2) *Semble :* if a woman who has received an engagement ring in contemplation of marriage refuses to fulfil the conditions of the gift & to carry out her promise, she must return the ring

(3) *Semble :* if an engagement to marry be dissolved by mutual consent, then in the absence of an agreement to the contrary the engagement ring & like gifts must be returned by each party to the other.—COHEN *v.* SELLAR, [1926] 1 K. B. 536; 95 L. J. K. B. 629; 135 L. T. 21; 42 T. L. R. 400; 70 Sol. Jo. 505.

Part IV.—Incomplete Gifts.

227. *Add. Annotation :*—**Overd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

228. For the paragraph in original volume substitute the following paragraph :—

—— **Non-payment due to suspicious signature —Subsequent death of donor.]**—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented :—*Held :* the cheque not having been paid, there was no valid & effectual gift of the money to the donee.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] 1 Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.

Compare original volume, p. 542, No. 292.

Part V.—Gifts mortis causâ.

292. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

327. *Add. Annotation :*—**Reld.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

331. *Add. Annotation :*—**Reld.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

347. *Add. Citations :*—95 L. J. Ch. 204; 133 L. T. 465.

372. *Add. Annotation :*—**Reld.** *Re* Swinburne, Sutton *v.* Featherley, [1926] Ch. 38.

PART V. SECT. 2, SUB-SECT. 2.—B. (b).

311 xxiii. —— ——.]—A *donatio mortis causâ* may be made by the donor placing money upon deposit receipt in the joint names of himself & the donee. The handing of the deposit receipt to the donee is sufficient delivery, & a direction by the donor to the donee to make certain payments out of the money does not invalidate the gift.—FAYNE *v.* MARTIN (1924), 59 I. L. T. 14.—IR.

PART V. SECT. 3, SUB-SECT. 3.—B.

374 v. —— ——.]—The delivery by a person *in extremis* of the keys of his safe, accompanied by the words, "They lead to everything I have got, everything I have got is yours" :—*Held :* to operate as a *donatio mortis causâ* of the things in the safe other than the money in a bank represented by a pass book found in the safe.—CUSACK *v.* DAY, [1925] 3 D. L. R. 1028; [1925] 2 W. W. R. 715.—CAN.

GUARANTEE AND INDEMNITY.

Part II.—Requisites of Guarantee.

134. *Add. Annotation* :—**Refd.** Hall v. I. R. Comrs. (1926), 135 L. T. 750.

Part III.—Proof of Guarantee.

323. *Add. Annotation* :— **Refd.** Franco-British Ship Store Co. v. Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

Part IV.—Interpretation.

407. *Add. Annotation* :—**Mentd.** Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.

421. *Add. Annotation* :— **Refd.** Allen v. Royal Bank of Canada (1925), 95 L. J. P. C. 17.

Part VII.—Surety's Rights against Principal Debtor.

996. *Add. Annotation* : —**Mentd.** Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

Part IX.—Determination of the Guarantee.

1216. *Add. Annotation* :—*As to* (2) **Consd.** *Re* Darwen & Pearce, Associated Paper Mills v. Barnes (1926), 95 L. J. Ch. 487.

1222. *Add. Annotation* :- **Apld.** *Re* Darwen & Pearce, Associated Paper Mills v. Barnes (1926), 95 L. J. Ch. 487.

1224a. Guarantee of call on shares. Forfeiture of shares—Discharge of surety.]—The forfeiture by a co. of the shares of a principal debtor constitutes an interference with the rights of a surety who has guaranteed payment of instalments owing upon such shares, in that it substitutes a fresh & more onerous liability upon the surety than the liability under the original contract, & deprives him of his equitable right of lien upon the shares. A surety is, therefore, discharged by such forfeiture from his contract of suretyship. *Re* DARWEN & PEARCE, ASSOCIATED PAPER MILLS v. BARNES (TRUSTEE) (1926), 95 L. J. Ch. 487; 70 Sol. Jo. 965; [1926] B. & C. R. 65.

1520. *Add. Annotation* : - **Mentd.** *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

1570. *Add. Annotations* :- **Refd.** Firm of R. M. K. R. M. v. Firm of M. R. M. V. L. (1926), 95 L. J. P. C. 197; Pirie v. Richardson (1926), 70 Sol. Jo. 1023.

1571. *Add. Annotations* : - **Mentd.** Bennett v. Whitehead, [1926] 2 K. B. 380; Firm of R. M. K. R. M. v. Firm of M. R. M. V. L., [1926] A. C. 761; Pirie v. Richardson (1926), 70 Sol. Jo. 1023.

1608. *Add. Annotation* : - **Refd.** *Re* Darwen & Pearce, Associated Paper Mills v. Barnes (1926), 95 L. J. Ch. 187.

PART III. SECT. 1, SUB-SECT. 1.—A.

ss. *Verbal agreement of guarantee or suretyship.*]—*Held:* unenforceable because of Stat. Frauds.—DOYLE v. MCKINNON, [1925] 3 D. L. R. 334; 57 O. L. R. 104.—CAN.

PART VI. SECT. 3, SUB-SECT. 3

775 ii. —— ——.]—REVILLON WHOLESALE, LTD. v. NEMIRSKY, [1925] 4 D. L. R. 1032.—CAN.

PART VII. SECT. 4, SUB-SECT 3.

937 iv. —— ——.]—READ v. MCLEAN, [1925] 3 D. L. R. 716.—CAN.

PART VIII. SECT. 2, SUB-SECT. 2.—B. (a).

1068 iv. —— ——.]—The fact that a settlement made by some of a number of co-sureties with their creditor has not been agreed to by all the co-sureties or fixed by judgment does not prevent those who have made the settlement & paid thereunder from enforcing contribution from the others, if the latter, although notified of & invited to take part in the negotiations for settlement, did nothing & made no protest with respect thereto.—STEWART v. BRAUN, [1925] 2 D. L. R. 423; [1925] 1 W. W. R. 571.—CAN.

PART VIII. SECT. 2, SUB-SECT. 2.—B. (b).

1068 i. *Recnd.*, 35 C. L. R. 48.

PART IX. SECT. 2, SUB-SECT. 1.—A.

ai. —— ——.]—*Held:* the surety was not released from his guarantee. BURNS v. THICKETT (Man.), [1925] 3 W. W. R. 736.—CAN.

PART IX. SECT. 2, SUB-SECT. 1.—C. (b).

af. *Surrender of some chattels bought under lien note.—No detriment to value of chattels.*]—*Held:* the surety who signed the note was not released.—TROYER v. BROCK & BROCK (1916), 34 W. L. R. 973. CAN.

PART IX. SECT. 2, SUB-SECT. 8.—B.

1480 i. *Release of mortgage debt.*]—*Held:* the surety was not liable under the guarantee.—ONCHERTON v. SCHLAEPFER, [1924] N. Z. L. R. 1170.—N Z.

Part XII.—Indemnity.

1787. *Add. Annotation :*—**Reld.** Pontypridd Grdns. *v.* Drew, [1926] 1 K. B. 567.

1789. *Add. Annotation :*—**Reld.** Pontypridd Grdns. *v.* Drew (1926), 95 L. J. K. B. 1030.

1790. *Add. Annotation :*—**Overd.** Pontypridd Grdns. *v.* Drew (1926), 95 L. J. K. B. 1030.

1790a. ——— ——— ———.]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied. *Birkenhead Union Guardians v. Brookes*, No. 1790, overd.—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

See, further, POOR LAW.

1830. *Add. Annotation :*—*As to* (2) **Reld.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.

1877. *Add. Annotation :*—**Reld.** Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

PART X. SECT. 4, SUB-SECT. 2.—C.

1685 i. *Character.*]—An offer, by an employer, who has knowledge of dishonesty on the party of his employee, amounts to a representation to one from whom he seeks or obtains, without disclosure, a fidelity guaranty, that, so far as he is aware, the employee whose fidelity is to be guaranteed is not dishonest. If that representation is untrue, it matters not that the employer's failure to disclose the true situation was not wilful, intentional, or with a view to advantage himself.—EBY-BLAIN, LTD. *v.* MATTHEWS, [1925] 2 D. L. R. 382; 56 O. L. R. 383.—CAN.

1685 ii. ———.]—Where an employee is required to furnish a fidelity bond, & his employer knows that he has been dishonest in the office or service to which the bond is to apply, but fails to disclose such knowledge to the surety who gives the bond in ignorance of the former dishonesty of appt., such non-disclosure releases the surety.—RURAL MUNICIPALITY OF CHURCHBRIDGE NO. 211 *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 3 D. L. R. 341; [1925] 2 W. W. R. 334; 19 Sask. L. R. 450.—CAN.

HIGHWAYS, STREETS AND BRIDGES.

Part I.—Definitions and Characteristics.

65. To the existing paragraph add as follows:—(3) The words "annual payment towards the cost of the maintenance & repair" in Local Government Act, 1888 (c. 41), s. 11 (2), mean a payment to be made annually in respect of the expenditure of the particular year, not a fixed sum to be arrived at by taking the average expenditure over a series of years.

79. *Add. Annotation:* - **Refd.** Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.

96. *Add. Annotation: Generally.* **Mentd.** Thurrock Grays & Tilbury Joint Sewerage Board v. Thames Land Co. (1925), 90 J. P. 1.

Part III.—Origin and Proof of Highways.

178. *Add. Annotation:—As to* (2) **Refd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.

187. *Add. Annotation:*—**Refd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57.

196. *Add. Annotation:—As to* (2) **Refd.** Layzell v. Thompson (1926), 43 T. L. R. 58.

216. *Add. Annotation:*—**Consd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.

219. *Add. Annotation:* —*As to* (1) **Refd.** Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

225. *Add. Annotation:*—**Mentd.** Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.

226. *Add. Annotation:*—**Mentd.** Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.

227. *Add. Annotation:*—**Mentd.** Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.

236. *Add. Annotation:* —*Generally*, **Mentd.** Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.

241. *Add. Annotation:*—**Mentd.** Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.

251. *Add. Annotations:*—*As to* (1) **Consd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133. *Generally*, **Refd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57.

285. *Add. Annotation:*— *As to* (1) **Refd.** Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

355a. ——————.]—The purchaser of land sold "subject to rights of way," after an unsuspected right of way had been established on behalf of the public, brought an action against the vendor for breach of the implied covenants expressed by his having conveyed as "beneficial owner." The vendor's covenant being qualified, the question turned upon whether there had been dedication of the right subsequently to 1782, the date of the last purchase for value by those through whom the vendor claimed. Pltf. produced two tithe maps, made respectively in 1802 & 1840, in neither of which was the right of way marked:—*Held:* the tithe maps were made for a special purpose, & not for the purpose of showing public or private rights other than as regards tithe; they were not, therefore, *primâ facie* evidence enabling pltf. to contend that the dedication was at a subsequent date, so as to shift upon deft. the *onus* of proving that the dedication was prior to 1782.—STONEY v. EASTBOURNE RURAL COUNCIL & DEVONSHIRE (DUKE) (1926), 95 L. J. Ch. 312; 135 L. T. 281; 90 J. P. 173; 70 Sol. Jo. 690; 24 L. G. R. 333, C. A.

Part V.—Rights in Connection with Highways.

546. *Add. Annotation:*—**Mentd.** Foster v. Lyons (1926), 70 Sol. Jo. 1182.

607. *Add. Annotation:*—**Refd.** Noble v. Harrison, [1926] 2 K. B. 332.

618. *Add. Annotation:*—**Apld.** A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92.

634. *Add. Annotation:*—**Mentd.** Montreal City v. Montreal Harbour Comrs., Tetreault v. Montreal Harbour Comrs., [1926] A. C. 299.

651. *Add. Annotation:—As to* (1) **Refd.** Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.

657. *Add. Annotation:—As to* (2) **Consd.** Howard-Flanders v. Maldon Corpn. (1926), 135 L. T 6.

664. *Add. Annotation:—Generally*, **Mentd.** Light v. West, [1926] 2 K. B. 238.

PART III. SECT. 2, SUB-SECT. 7.

694 j. *Non-user by public.*)—BRITISH COLUMBIA HOP CO., LTD. v. DISTRICT OF KENT, (1926) 3 D. L. R. 171; [1925] 2 W. W. R. 31.—CAN.

Part VI.—Repair of Highways.

892. *Add. Annotation :—As to* (1) **Apld.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.
945. *Add. Annotation :*—**Consd.** Garnett *v.* Pratt, [1926] Ch. 897.
997. *Add. Annotation :*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

Part VII.—Enforcement of Duty to Repair.

1053. *Add. Annotation :*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

Part VIII.—Powers, Duties and Liabilities of Highway Authorities.

1146a. — — Removal of footway.]—A municipal corpn., in exercise of its powers as highway authority under Public Health Act, 1875 (c. 55), s. 149, widened a narrow street in the town by entirely removing a raised & kerbed footway on one side, & throwing its site into the carriage-way without any notice to or consent of the owner of the adjoining house & premises, who was also owner of one-half of the soil of the road. The owner brought an action in the county ct. for a mandatory order to restore the footway, & for damages for injury to his property. It was proved that the access to & egress from the property through doors in a garden wall was rendered inconvenient & dangerous by the removal of the footway, & the county ct. judge granted a mandatory injunction to defts. to restore the footway to a width of 1 ft. less than before :—*Held :* the county ct. judge had rightly directed himself in law, & there was evidence upon which he was entitled to find that the action of defts. in removing the footway was unreasonable & arbitrary, & it was not sufficient for the action to be *bonâ fide ;* & the order was properly made.—HOWARD-FLANDERS *v.* MALDON CORPN. (1926), 135 L. T. 6 ; 90 J. P. 97 ; 70 Sol. Jo. 544 ; 24 L. G. R. 224, C. A.

1228a. Amount of payment—How calculated—Local Government Act, 1888 (c. 41), s. 11 (2).]—SANDGATE URBAN DISTRICT COUNCIL *v.* KENT COUNTY COUNCIL, No. 65, *ante.*

1272. *Add. Annotation :—Generally,* **Mentd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 101.

PART VI. SECT. 1.

789 i. *Revsd.*, 26 A. R. 43.

789 ii. —— —— *Every portion of road.*] A municipality is liable in damages for an accident resulting from the breach of its duty to keep every portion of a road in repair, that is, in a fit condition to be travelled upon.—REA *v.* MUNICIPALITY OF MINTO, [1925] 3 D. L. R. 523 ; [1925] 2 W. W. R. 657 ; 35 Man. L. R. 190.—**CAN.**

789 iii. — — — — — — — — .]—Although every portion of a public road must be kept in repair by the municipality in which the road lies, the driver of a very heavy vehicle is not entitled to drive it to the extreme edge of a raised road built of earth in absolute reliance that it will not crumble.—BLACKIE *v.* MUNICIPALITY OF MINOTA, [1925] 4 D. L. R. 1054 ; [1925] 3 W. W. R. 561.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

sd. *Liability of village - Village Act, R. S. A.* 1922 (c. 109), *s.* 88.]—Before a village can be held liable for damage resulting from a defect in a road, it must be shown that the road is within one of the classes of roads specified in the above sect.—GREENAWAY *v.* CANADIAN PACIFIC RY. CO., [1925] 1 D. L. R. 992 ; [1925] 1 W. W. R. 667 ; 21 Alta. L. R. 331. *varying,* [1924] 4 D. L. R. 977. [1924] 3 W. W. R. 498.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.

r (p. 389) i. ——.]—Pltf. slipped & fell when walking upon a granolithic sidewalk & was injured. For five or six days before this occurrence, the sidewalk at the point where she fell was covered with glare ice & was consequently in a slippery & dangerous condition. Pltf.'s injury was not attributable to any lack of care on her part. The city authorities had knowledge of the dangerous condition for five or six days before the accident & made no attempt to remove the danger :—*Held :* the city corpn. were guilty of gross negligence within Consolidated Municipal Act, 1922, s. 460 (3), & were liable.—COKERS *v.* BELLEVILLE, [1925] 2 D. L. R. 250 ; 56 O. L. R. 451 ; *revsg.*, [1924] 2 D. L. R. 333.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 9.

sf. *Street railway track adjacent to highway.*]—Pltfs. in a motor car attempted to cross the tracks of a street railway, which were at that point not laid upon the travelled highway but upon land owned by the city corpn. adjacent to the travelled highway. The place of crossing was in a dangerous condition, by reason of the tracks not being ballasted but simply resting upon exposed sleepers. The car was imprisoned there & run into by a street car, & pltfs. were injured & the car damaged :—*Held :* the city corpn. were liable since, although no obligation to repair existed, there was a trap or concealed danger.—JAMES *v.* TORONTO (1925), 57 O. L. R. 322 ; *affg.* 27 O. W. N. 233.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—A.

k (p. 404) i. —— *Failure of traveller to see.*]—Where a traveller fails to see an obstruction which a person using ordinary care would have avoided, the statutory liability does not arise.—KING *v.* RILEY, [1925] 2 D. L. R. 218.—**CAN.**

cc i. ——.]—Where an accident results from lack of repair of a road, a presumption arises, without evidence that the municipality responsible for the road had notice of its condition, that the statutory duty to repair has been neglected.—REA *v.* MUNICIPALITY OF MINTO, [1925] 3 D. L. R. 523 ; [1925] W. W. R. 657 ; 35 Man. L. R. 190.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

ak. *Road under repair by Minister of Highways.*]—*Held :* as long as the work of construction or repair is being carried on, the highway is removed from the direction, control & management of the municipality, which is not liable to travellers for damages resulting from its state of repair until the highway is again under its control & management.—HORSFIELD *v.* CANA RURAL MUNICIPALITY NO. 214, [1925] 2 D. L. R. 874 ; [1925] 1 W. W. R. 1067 ; 19 Sask. L. R. 378.—**CAN.**

Part IX.—Nuisances and Remedies.

1465. After this case add "*See, also*, AGRICULTURE, Nos. 970a, 970b."

1509. *Add. Citation :*—95 L. J. K. B. 81.

1514. *Add. Annotation :—Generally*, **Reld.** Britannia Hygienic Laundry Co. v. Thornycroft (1926), 135 L. T. 83.

1519. *Add. Annotation :* — **Distd.** Noble v. Harrison, [1926] 2 K. B. 332.

1709. *Add. Annotation :—As to* (2) **Reld.** Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.

1711. *Add. Annotation :*— **Distd.** Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.

Part XI.—Excessive Weight and Extraordinary Traffic.

1841. After this case add "*See, also*, No. 1852, *post*."

1844. To the existing paragraph add as follows :—

The surveyor of a highway gave a certificate under the above sect. to the effect that extraordinary expenses had been incurred by reason of extraordinary traffic caused by resp. in repairing roads in four separate townships. Six months later he gave another certificate which referred to extraordinary expenses incurred partly before & partly after the date of the first certificate on a single road in one of the townships :—*Held :* the first certificate was good, &, with regard to expenses incurred before it was made, the period of six months limited by Summary Jurisdiction Act, 1848 (c. 43), s. 11, for recovering the amount began to run from the date of the first certificate.

1852. After this case add "*See, also*, No. 1841, *ante*."

1852a. — — **Where more than one certificate given.**] - WIRRAL HIGHWAY BOARD v. NEWELL, No. 1841, *ante*.

1858a. —— **Where several contracts.**] - EPSOM URBAN COUNCIL v. LONDON COUNTY COUNCIL, No. 1818, *ante*.

Part XIII.—Streets.

1997. *Add. Annotation :*—**Consd.** Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.

2032. *Add. Annotation : As to* (2) **Consd.** A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92.

2360. *Add. Annotation :* **Mentd.** *Re* Jauncey, Bird v. Arnold (1926), 131 L. T. 728.

2409. *Add. Annotation :* - **Reld.** Faulkner v. Hythe Corpn. (1926), 43 T. L. R. 55.

2430a. —— **After completion of works.**]—When an objection is lodged to proposed works under Private Street Works Act, 1892 (c. 57), s. 7, the local authority must apply under sect. 8 to the justices to determine the objection before the works are executed. After the works are completed, the justices have no jurisdiction to determine an objection under sect. 7. - FAULKNER v. HYTHE CORPN. (1926), 43 T. L. R. 55 ; 90 J. P. Jo. 670, D. C.

2432. *Add. Annotation :* **Reld.** Faulkner v. Hythe Corpn. (1926), 43 T. L. R. 55.

2443. *Add. Annotation :* - **Reld.** Faulkner v. Hythe Corpn. (1926), 43 T. L. R. 55.

Part XV.—Bridges and Approaches thereto.

2630. *Add. Citation :*—95 L. J. Ch. 86.

2650. *Add. Annotation :* - **Reld.** A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92.

2719a. —— **Damage by locomotive passing over bridge—Locomotive Act, 1861 (c. 70), s. 7.**]— In respect of actual damage to a bridge, as distinguished from consequential loss, the liability to repair is imposed upon the owner of the locomotive if he has the charge of it at the material time, but if some person other than the owner has the charge of it, the liability is upon that person. The above sect. does not make the owner & such other person jointly & severally liable for that damage.—SOUTHERN RY. CO. v. GOSPORT CORPN., [1926] 2 K. B. 89 ; 95 L. J. K. B. 545 ; 90 J. P. 161 ; 70 Sol. Jo. 651 ; *varied*, [1927] 1 K. B. 331, C. A.

PART IX. SECT. 1, SUB-SECT. 1.- N.

sp. *Prickly bush protruding through fence.*]—Where deft. permitted a gorse bush growing on his land to project over a street, & plff. was injured by a thorn of the bush penetrating one of his eyes :—*Held :* deft. was liable.—CULL v. GREEN (1924), 27 W. A. L. R. 62.—AUS.

PART IX. SECT. 3, SUB-SECT. 3.- A.

q l. ——.]—The owner of an automobile is not entitled to maintain an action against a municipality for damages for non-repair of a highway, if he has not taken out a licence to permit him to operate his car.—SAMPSON v. ROBERTSON, [1925] 1 D. L. R. 624 ; 57 N. S. R. 495.—CAN.

q m. — *Notice of claim.*]—The absence of the notice required by City Act, R. S. S. 1920 (c. 86), s. 342, to be given the municipality is a bar to an action for damages for injuries caused by snow or ice on a sidewalk.—HICKMAN v. MOOSE JAW CITY, [1925] 1 D. L. R. 115 ; [1924] 3 W. W. R. 639.—CAN.

2750. *Add. Annotation :*—**Mentd.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436.

2766a. **Liability of borough council—Bridge built since 1835—Public Health Act, 1875 (c. 55), s. 4.**]—In 1882 seven streets were, in the course of the development of an estate, carried across a river on iron girder bridges. These streets subsequently became highways repairable by the inhabitants at large. An action was commenced by the A.-G. against the local authority for a declaration that they were liable to repair & keep in repair these seven bridges :—*Held :* having regard to the fact that the word "street," as defined by the above sect., includes, if this is not inconsistent with the context, any bridge, not being a county bridge, pltf. was entitled to the declaration.—A.-G. *v.* HORNSEY BOROUGH COUNCIL (1926), 43 T. L. R. 92 ; 70 Sol. Jo. 1107 ; 90 J. P. Jo. 732.

2787. *Add. Annotation :*—*As to* (3) **Reld.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

PART XV. SECT. 2, SUB-SECT. 2.—B. (c).

o i. —— *Transfer of area to municipality.*]—A railway co. constructed & maintained a bridge & approaches by which a road was carried across their railway. The area in which the bridge was situated was subsequently annexed to a burgh, & the burgh authorities called upon the co., as frontagers to a private street, to construct a paved footway along one side of the road :—*Held :* assuming that the co. were frontagers to a private street, Burgh Police (Scotland) Act, 1903 (c. 33), s. 16, had not, either expressly or by implication, altered or extended these obligations.—MAGISTRATES OF LEVEN *v.* LONDON & NORTH EASTERN RY. CO., [1926] S. C. 528.—SCOT.

PART XV. SECT. 3.

k i. —— *Apportionment of cost—Bridge across railway.*]—PUBLIC HIGHWAYS DEPT., ONTARIO *v.* CANADIAN PACIFIC RY. CO. (CLAPPISON BRIDGE CASE) (1924), 30 Can. Ry. Cas. 5.—CAN.

k ii. —— —— *Bridge over boundary river.*]—In order to give jurisdiction to the Municipal Comr. to apportion the costs of building a bridge over a river or stream forming the boundary between two municipalities, the latter must previously have agreed to construct the bridge.

The power of a municipality to contract with another municipality to build by joint action such a bridge must be exercised by bye-law.—RURAL MUNICIPALITY OF PORTAGE LA PRAIRIE *v.* RURAL MUNICIPALITY OF CARTIER, [1925] 4 D. L. R. 1035 ; [1925] S. C. R. 691 ; *affg.*, [1924] 4 D. L. R. 601 ; [1924] 3 W. W. R. 244 ; 34 Man. L. R. 405 ; *revsg.*, [1924] 1 D. L. R. 775 ; [1924] 1 W. W. R. 925.—CAN.

HUSBAND AND WIFE.

Part I.—Contracts to Marry.

20. *Add. Annotation :*—**Reld.** Skipp *v.* Kelly (1926), 42 T. L. R. 258.

26. *Add. Annotation :*—**Reld.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

30. *Add. Annotation :*—**Reld.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

36. *Add. Annotation :*—**Mentd.** Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

39. *Add. Annotation :*—**Reld.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

81. *Add. Annotation :*—*As to* (3) **Reld.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

87. *Add. Annotation :*—**Reld.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

114. *Add. Annotation :*—**Reld.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

Part II.—Marriage.

510. *Add. Annotation :*—**Reld.** Skipp *v.* Kelly (1926), 42 T. L. R. 258.

Part III.—Personal Rights and Obligations arising from Marriage.

647. *Add. Annotation :*—**Reld.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

Part V.—Effect of Divorce or Separation with Regard to Wife's Property.

786. *Add. Annotation :* **Reld.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

787. *Add. Annotation :* **Reld.** A. G. for Alberta *v.* Cook, [1926] A. C. 444.

Part VI.—Disposition of Property.

809. *Add. Annotation :*—**Mentd.** Parr *v.* A.-G., [1926] A. C. 239.

906. *Add. Citations :*—*revsd. sub nom.* PUBLIC TRUSTEE *v.* WOLF, [1923] A. C. 544; 92 L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.

Add. Annotation :—**Mentd.** Parr *v.* A.-G., [1926] A. C. 239.

PART II. SECT. 11, SUB-SECT. 1.

● 1. —— *Compliance with Marriage Act, s.* 21 (*b*).]—McGINN *v.* ELLERTON, ELLERTON *v.* ELLERTON, [1925] 2 D. L. R. 1136; [1925] 1 W. W. R. 962.—CAN.

PART II. SECT. 11, SUB-SECT. 2. B. (a).

478 1. *Many years.*]—P., a Natal native, from about 1897 until just before her death in 1916 cohabited continuously with A., a half-caste woman. When the cohabitation began A. had a husband, who was still living. There was evidence to show that P. & A. had both said before 1902 that they were not married, & there was no evidence of any registration of a marriage between P. & A. There was some evidence that P. & A. were reputed to be man & wife since the birth of their five children, all of whom had been brought up & educated by P.'s brother C., who had treated them as his nephews & nieces:—*Held:* the evidence adduced was not strong enough to rebut the presumption of marriage arising from the lengthy cohabitation of P. & A.—NYOKANA *v.* NYOKANA (1925), 46 N. L. R. 227.—S. AF.

PART IV. SECT. 1.

a 1. —— *Acquired & disposed of through husband—living to husband.*]—A number of hogs, either the progeny of two hogs acquired by a wife as compensation for services performed by her for a neighbour or bought with the proceeds of sale of such progeny, were raised, acquired & disposed of through the efforts & the expense of her husband:—*Held:* they did not belong to the wife as against the husband's creditors.—JOHN DICKIE PRAW CO. *v.* BOWEN, [1926] 1 D. L. R. 769; [1925] 1 W. W. R. 357.—CAN.

PART IV. SECT. 6, SUB-SECT. 2.

a6. *Not business carried on in partnership with husband.*]—CLARK *v.* CANANT (B. C.), [1925] 4 D. L. R. 431; [1925] 3 W. W. R. 357; *revsg.*, [19 5] 3 D. L. R. 225, [1925] 2 W. W. R. 563.—CAN.

PART VI. SECT. 1, SUB-SECT. 5. C. (a).

951 *v.* [illegible].] UNION BANK *v.* HENDRICK, [1925] 4 D. L. R. 1057.—CAN.

1007. *Add. Annotation :*—**Refd.** Bosworthick *v.* Bosworthick, [1926] P. 159.

1106. *Add. Annotation :*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

1118. *Add. Annotation :*—**Mentd.** *Re* Bold, Banks *v.* Hartland (1926), 95 L. J. Ch. 201.

1203. *Add. Citation :*—8 W. R. 333.

1225. *Add. Annotation :*—**Apld.** *Re* Fleetwood's Policy, [1926] Ch. 48.

1226a. **—— —— If living at his death—Cash value of policy sought to be taken by insured during life.**]—A husband took out an insurance policy for £500 on his life, & by the terms of the policy the co. agreed to pay that sum to insured's wife, if she were living at his death, or in the event of her prior death to pay it to insured's exors., administrators & assigns. The policy contained a proviso that, if at the end of twenty years insured was still living, he should have the right to exercise any of six specified options. Insured being then still living, he exercised an option to receive the entire cash value of the policy with its share of accumulated profits & to discontinue the policy. A sum of £288 thus became payable. The co. were unwilling to pay over this sum except on the joint receipt of the husband & wife, & ultimately paid it into ct. : —*Held :* (1) the policy came within sect. 11 of the above Act, & created a trust in favour of the wife in certain events ; (2) insured must be taken to have exercised the option for the benefit of the trust ; (3) unless the husband & wife came to an agreement, the fund must be accumulated in ct. until it could be ascertained by the death of either party who was entitled to it.—*Re* FLEETWOOD'S POLICY, [1926] Ch. 48 ; 95 L. J. Ch. 195 ; 135 L. T. 374.

1228. *Add. Citation :*—95 L. J. Ch. 24.

Part VIII.—Contracts of Wife during Coverture.

1498. *Add. Annotation :*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45.

1527. *Add. Annotations :*—**Mentd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380 ; Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundarum Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 107.

1717. *Add. Annotation :*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45.

1732. *Add. Annotation :*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45.

1741. *Add. Citation :*—2 C. & P. 25, n.

1755. *Add. Annotation :*—**Consd.** Selby *v.* Atkins (1926), 135 L. T. 45.

PART VI. SECT. 8, SUB-SECT. 2.—A.

e1. *Separate estate.*]—The interest of a wife in a policy effected by her husband on his own life, & which has been declared by him to be for her benefit, is her separate estate, & may, in her husband's lifetime, be assigned by her.—GRAHAM *v.* CANADA LIFE ASSURANCE CO., PROCTOR *v.* GRAHAM (1894), 24 O. R. 607.—**CAN.**

PART VI. SECT. 8, SUB-SECT. 2. B.

n1. *Bankruptcy of husband.*]—S. effected an insurance on his own life in favour of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. S.'s estates were afterwards sequestrated : *Held :* the policy vested in bkpt. as trustee for his wife, & it formed no part of his estate & was not liable to the diligence of his creditors.—STEWART *v.* HOBBIE (1901), 8 S. L. T. 436.—**SCOT.**

n ii. *Whether assignable.*]—A policy of assurance was effected by a husband for the benefit of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. There was competition between the widow & an assignee claiming under an assignation which bore to have been executed with the consent & concurrence of the wife :—*Held :* the wife had no power to discharge the trust in her favour created by the policy, & the insurance co. ought to have known that the deed was one which the spouses were disabled from granting.—SCOTTISH LIFE CO. *v.* DONALD (1901), 9 S. L. T. 200.—**SCOT.**

PART VI. SECT. 9, SUB-SECT. 2.—A. (a).

1302 v. —— ——.]—Pltf., deft.'s husband, became entitled to a conveyance of certain land vested in a solr. By pltf.'s direction the solr. conveyed the land to deft. The conveyance was dated Apr. 9, 1920, & was not registered until the following Dec. Until registration the deed had not been delivered, & deft. had been told nothing about it :—*Held :* though the presumption of advancement may be rebutted by evidence of actual intention, there was cogent evidence of pltf. having ultimately made up his mind that his wife should have the property.—HARRINGTON *v.* HARRINGTON, [1925] 2 D. L. R. 849 ; 56 O. L. R. 568.—**CAN.**

ak. *Grain & stock on land conveyed to wife.*]—A husband conveyed to his wife half of a quarter section of land. Husband & wife lived together on, & farmed, the quarter section, & the husband worked on the farm after the transfer in the same way as before : —*Held :* the husband was the owner of grain grown on, & animals situate on, the quarter section.—NATIONAL TRUST CO. *v.* HOLOWAYCHUK, [1925] 3 W. W. R. 382.—**CAN.**

am. *Purchase in husband's name—Subsequent transfer to wife—Failure of consideration.*]—Husband & wife purchased a house in Oct. 1920. The house was in pltf.'s name until Jan. 1922, when it was transferred to the wife. In Jan. 1924, the husband was ejected from the house, & he brought action against the wife for a declaration that his wife held the house as trustee for him. On the trial the husband stated that when he made the conveyance to his wife he did so on her undertaking that the members of her family would vacate the house, & this was never carried out :—*Held :* pltf. could not succeed, as the only claim he could set up would be that he had made a conveyance for a consideration that had failed, & his action would be either for specific performance or damages.—BODY *v.* BODY (1924), 34 B. C. R. 315.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A. (b).

m i. ——.]—*Held :* to raise a presumption of joint tenancy.—MATHEWS *v.* NATIONAL TRUST CO. (Ont.), [1925] 4 D. L. R. 774.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—D. (a).

1691 ii. *Rered.*, 9 O. R. 198.

PART VIII. SECT. 3, SUB-SECT. 2.—G.

1774 i. For "A husband is liable" read "A husband is not liable."

Part XI.—Contracts for Separation.

2174. *Add. Annotation :*—**Reld.** Bosworthick v. Bosworthick, [1927] P. 64.

2176. *Add. Annotation :*—**Reld.** Bosworthick v. Bosworthick, [1927] P. 61.

Part XII.—Legal Proceedings.

2189a. —— ——.]—PRACTICE NOTE, [1926] W. N. 8.

Part XIII.—Matrimonial Causes.

2317. *Add. Annotation :*—*As to* (2) **Apld.** Cavendish v. Cavendish, [1926] P. 10.

2321. *Add. Annotation :*—**Reld.** A.-G. for Alberta v. Cook, [1926] A. C. 444.

2743. *Add. Annotations :*—**Distd.** Mart v. Mart, [1926] P. 24. **Reld.** Selby v. Atkins (1926), 135 L. T. 45.

2746. *Add. Annotation :*—**Reld.** Mart v. Mart, [1926] P. 21.

2747. *Add. Citations :*—[1926] P. 21; 95 L. J. P. 29; 134 L. T. 446.

2765a. Conviction for perjury—In action in which immorality alleged.]—A conviction for perjury committed during a slander action, for falsely swearing that sexual intercourse with a certain woman had not occurred, is equivalent to a finding that there had been such intercourse, & the certificate of conviction is admissible as *prima facie* evidence of the intercourse in a subsequent suit for dissolution of marriage in which the man convicted is resp.—O'TOOLE v. O'TOOLE (1926), 134 L. T. 542; 42 T. L. R. 215.

PART XI. SECT. 6, SUB-SECT. 12.

2086 i. *Covenant by wife not to claim further maintenance—Subsequent judicial separation.*]—Where a petition for a decree of judicial separation on the ground of the husband's adultery was brought so that a petition for alimony might be founded:—*Held:* the petition must be dismissed.—K. v. K., [1925] 3 D. L. R. 872; [1925] 2 W. W. R. 641. **CAN.**

PART XI. SECT. 7, SUB-SECT. 2. B.

2102 ii. ——*Breach of condition as to access to child—Reply alleging husband's bad character.*]—A separation agreement provided that the wife should be given the custody of the son, but that his father should be allowed to see him with reasonable frequency & should be consulted as to, & satisfied with, his up-bringing. To an action by the wife under the agreement for overdue instalments breach of the condition as to the son was pleaded:—*Held:* a reply alleging the husband's bad character was no excuse for a breach of the condition.—MCLENNAN v. MCLENNAN, [1925] 3 D. L. R. 281; [1925] S. C. R. 279; *affg.*, [1925] 1 D. L. R. 277; 57 N. S. R. 480. **CAN.**

PART XI. SECT. 8.

2165 iii. ——.]—A separation agreement may have as a secondary object the effecting of a permanent settlement of property, but unless a separation agreement clearly indicates such purpose the general rule, that the agreement is no longer enforceable after resumption of cohabitation, should be applied.—NATIONAL TRUST CO., LTD. v. BELL, [1925] 4 D. L. R. 1029; [1925] 3 W. W. R. 712.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 1.—A.

● (p. 249) **i.** ——.]—In an action by a purchaser for specific performance of an agreement for the sale of land, a motion by deft.'s wife to be added as deft. on the ground that, under Dower Act, R. S. A. 1922 (c. 135), she had an interest in the property, was refused.—SAMPSON v. THOMAS, [1925] 1 W. W. R. 1018.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 1. F. (a).

2221 ii. ——.]—Under K. B. Rule 755 an order for payment may be obtained by a judgment creditor against a married woman. HISCOX v. BLACK, [1925] 3 W. W. R. 679. **CAN.**

PART XIII. SECT. 1, SUB-SECT. 1.

m i. ——.] A judge of the Supreme Ct., sitting in his ordinary capacity, has no jurisdiction to interfere with decrees pronounced by the ct. as a ct. for divorce & matrimonial causes under Matrimonial Causes Act, 1857 (c. 85). CLAMAN v. CLAMAN (1925), 35 B. C. R. 137. **CAN.**

n i. ——*High Court Bombay To hear matrimonial suits between Jews.*] The High Ct. of Bombay has jurisdiction to entertain a suit arising out of matrimonial disputes between Jews, & in deciding such disputes, the Jewish law must be applied "with such adaptations to the circumstances of the case as justice may require." BENJAMIN v. BENJAMIN (1925), I. L. R. 50 Bom. 369. **IND.**

PART XIII. SECT. 5, SUB-SECT. 1. E.

2452 ii. ——.] On a petition for restitution of conjugal rights petitioner must satisfy the ct. that he or she has a sincere desire for a real restitution of those rights & a corresponding willingness to render them to the other spouse. WOODLANDS v. WOODLANDS (1924), 35 C. L. R. 446. **AUS.**

PART XIII. SECT. 5, SUB-SECT. 2. B. (a).

2521 i. *Question of fact & degree.*]—Cruelty is a matter of degree.—A. v. A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346. **CAN.**

2534 i. *Cumulative effect of acts not cruelty per se.*]—The acts constituting cruelty may be treated as cumulative.—A. v. A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2. B. (b).

2ss. *Spending earnings on mistress—Telling wife of preference for mistress.*]—Where the conduct of a husband, in obliging his wife to earn her own living while he spends his earnings on a mistress for whom he openly indicates his preference, so preys on the wife's mind that, to his knowledge, it undermines her health, it constitutes cruelty.—JONES v. JONES, [1925] 2 D. L. R. 1144, [1925] 1 W. W. R. 449, 19 Sask. L. R. 262. **CAN.**

PART XIII. SECT. 5, SUB-SECT. 2. B. (h).

sf. *Husband describing himself on enlistment as widower Deserting wife during pregnancy.*]—A husband deserted his wife on two occasions, on one of which she had a baby three months old, & on the other when she was about to be confined. On joining the army in 1916 the husband stated that he was a widower, & thereby the wife was caused considerable pain & anxiety, & with difficulty obtained an allowance out of his pay as his wife.—*Held:* the husband's conduct amounted to cruelty. STUART v. STUART (1926), I. L. R. 53 Calc. 436. **IND.**

PART XIII. SECT. 5, SUB-SECT. 2. E.

2683 iii. ——.]—Action by a wife for judicial separation on the ground of cruelty dismissed, where the violence complained of did not injure her health or give her cause to fear injury thereto, & was the result of her conduct with another man which she continued knowing that it provoked deft. CONNOLLEY v. CONNOLLEY, [1925] 2 W. W. R. 426.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3. B. (b).

2800 i. *What amounts to cohabitation—Parties living under same roof—Husband not recognising or treating wife as such.*]—*Held:* the husband was living apart from his wife without sufficient excuse in circumstances entitling her to restitution of conjugal rights.—LINKHART v. LINKHART, [1925] 2 D. L. R. 1180. **CAN.**

2940. *Add. Annotation :*—**Reld.** Diggins *v.* Diggins (1926), 43 T. L. R. 37.

3064. *Add. Annotation :*—*As to* (1) **Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3066. *Add. Annotation :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3068. *Add. Annotation :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3069. *Add. Annotation :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3093. *Add. Annotation :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3094. *Add. Annotation :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3122. *Add. Citation :*—134 L. T. 670.

3166. *Add. Annotation :*—*As to* (1) **Reld.** Sneyd *v.* Sneyd & Burgess, [1926] P. 27.

3179a. ——.]— (1) Condonation has been defined as "the complete forgiveness & blotting out of a conjugal offence followed by cohabitation, the whole being done with knowledge of all the circumstances of the particular offence forgiven."

(2) Petitioner alleged, but in the opinion of the ct. failed to prove, that he was induced to resume cohabitation by his belief, brought about by the fraudulent representation of his wife, that she was innocent :—*Semble :* such a belief would not be material if proved.—SNEYD *v.* SNEYD & BURGESS, [1926] P. 27 ; 95 L. J. P. 22 ; 135 L. T. 124 ; 42 T. L. R. 247.

3182a. ——.]—SNEYD *v.* SNEYD & BURGESS, No. 3179a, *ante.*

3213. *Add. Annotation :*—*As to* (1) **Reld.** Sneyd *v.* Sneyd & Burgess, [1926] P. 27.

3223. *Add. Citations :*—[1926] P. 27 ; 95 L. J. P. 22 ; 135 L. T. 124 ; 42 T. L. R. 247.

3486. For "**Coupled with discretion**" read "**Coupled with desertion.**"

3537. *Add. Annotation :*—*As to* (1) **Apld.** O'Toole *v.* O'Toole (1926), 134 L. T. 542.

3783a. **Wife's petition—Woman charged with adultery added as respondent with husband.**]—PEPPER *v.* PEPPER & BAKER (1926), 43 T. L. R. 1.

4307. *Add. Annotation :*—*As to* (1) **Reld.** Baldwin Raper *v.* Baldwin Raper & Metz (1926), 42 T. L. R. 619.

4313. *Add. Citations :*—95 L. J. P. 18 ; 134 L. T. 414.

4354a. —— "**Discretion cases**"—**Adultery by petitioner—Insertion in defended list necessary.**]—HOWELL *v.* HOWELL & DAVIDSON (1926), 42 T. L. R. 497.

4422. *Add. Annotation :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

4427. *Add. Citation :*—11 W. R. 85.

4439. *Add. Annotation :*—**Consd.** Cavendish *v.* Cavendish, [1926] P. 10.

PART XIII. SECT. 5, SUB-SECT. 3.—B. (g).

2940 ll. ——.]—A divorce refused, on the ground that a separation agreement prevented a finding of desertion.

In an action for divorce the existence of a separation agreement is not to be disregarded by the ct. merely because deft. does not set it up as a bar.—WALSH *v.* WALSH & KIRKLAND, [1925] 2 D. L. R. 794 ; [1925] 1 W. W. R. 951 ; 19 Sask. L. R. 509.—CAN.

PART XIII. SECT. 5, SUB-SECT. 3.—E.

2975 l. *During imprisonment—Manifest intention to desert.*]—A husband, who was married in July, 1916, lived with his wife for six weeks, & thereafter did not live with her again for over three years. In Nov. 1919, he met her accidentally & lived with her for a few days, & then he went abroad to take up an appointment. On the voyage out he wrote informing her that the appointment had been cancelled. Thereafter he never lived with his wife or communicated with her again. From Apr. 1920 till June 1923 he was in prison, & in Oct. 1923 he was again imprisoned. In Oct. 1925, after his release, he wrote to his wife's father stating that he was about to go abroad, & offering to supply material for divorce :—*Held :* pursuer had relevantly averred desertion commencing in Nov. 1919 & including the periods of defender's incarceration, in respect that, when liberated from prison, defender had shown no disposition to alter his intention to persist in his desertion.—PARKER *v.* PARKER, [1926] S. C. 574.—SCOT.

PART XIII. SECT. 7, SUB-SECT. 3.—D. (a).

sm. *In defence to suit for divorce on ground of desertion.*]—A. *v.* A., [1925] 2 D. L. R. 1195 ; [1925] 2 W. W. R. 154 ; 19 Sask. L. R. 346.—CAN.

PART XIII. SECT. 7, SUB-SECT. 3.—D. (h) iii.

3255 iii. ——.]—Any matrimonial offence which in itself is ground for divorce but which has been condoned may be revived by the subsequent commission of any other legally recognised matrimonial offence, *e.g.*, cruelty.—A. *v.* A., [1925] 2 D. L. R. 1195 ; [1925] 2 W. W. R. 154 ; 19 Sask. L. R. 346.—CAN.

PART XIII. SECT. 7, SUB-SECT. 4.—D. (a) v.

3468 l. *Whether conclusive in favour of petitioner.*]—On a petition for dissolution of marriage under Divorce & Matrimonial Causes Amendment Act, 1920, s. 4, as amended by 1921-22 Act, s. 2 (1), where resp. proves to the ct.'s satisfaction that the separation was due to petitioner's adultery, resp. is entitled to rely on that adultery as a bar to petitioner's claim for relief, notwithstanding such adultery was condoned. CHAPMAN *v.* CHAPMAN, [1926] N. Z. L. R. 291.—N.Z.

PART XIII. SECT. 8, SUB-SECT. 5.—B.

3853 ll. ——.]—Substitutional service in a divorce action effected in accordance with an order therefor regularly made is equivalent to personal service, & it is not necessary that actual notice of the proceedings should reach deft.—PARTINGTON *v.* PARTINGTON, [1925] 3 D. L. R. 1085 ; [1925] 2 W. W. R. 723 ; *revsg.* 19 Sask. L. R. 402 ; [1925] 1 W. W. R. 1039.—CAN.

PART XIII. SECT. 8, SUB-SECT. 6.—B.

sp. *Further & better particulars—When ordered.*]—Petitioner for divorce ordered, on motion of co-resp., to deliver further & better particulars of the dates & places when & where the acts of adultery mentioned in the petition were committed.—GUSSOWATT *v.* GUSSOWATT & JONES, [1925] 2 D. L. R. 436 ; [1925] 2 W. W. R. 226 ; 35 Man. L. R. 134.—CAN.

PART XIII. SECT. 9, SUB-SECT. 1.—A.

sw. *Not local master.*]—In an action for judicial separation & alimony applications for *interim* alimony must be made to a judge in chambers ; a local master has no jurisdiction to entertain them.

Where an order for *interim* alimony has been made by a local master, such order is a nullity, but a judge in chambers has no jurisdiction to set it aside where the application to him is not by way of appeal.—VOLHOFFER *v.* VOLHOFFER, [1925] 3 D. L. R. 552 ; [1925] 2 W. W. R. 304 ; 19 Sask. L. R. 442.—CAN.

PART XIII. SECT. 9, SUB-SECT. 1.—B. (c).

4036 iv. ——.]—An order for payment by deft. to pltf. in an action for alimony of *interim* alimony & disbursements was set aside, pltf. having means of her own ample for the purpose of maintaining herself & bringing the action to trial.—GIBBS *v.* GIBBS, [1925] 2 D. L. R. 880 ; 56 O. L. R. 614.—CAN.

PART XIII. SECT. 11, SUB-SECT. 2.

4376 l. *Whether formal proof essential—Suit for dissolution—Damages claimed against co-respondent.*]—Where on a petition for divorce damages are claimed against co-resp. *prima facie* proof of marriage, if not rebutted, is sufficient to meet the strictness of proof required in the criminal conversation phase of the proceedings.—KNIGHT *v.* KNIGHT & OWENS, [1925] 3 D. L. R. 467 ; [1925] 1 W. W. R. 824.—CAN.

PART XIII. SECT. 11, SUB-SECT. 3.

h l. —— ——.]—In a suit by a husband for divorce, letters written by the wife to co-resp., but not delivered to him, are not made evidence of adultery admissible against co-resp. by Ceylon Evidence Ordinance, 1895, s. 9. The fact that co-resp.'s counsel has based questions in cross-examination upon the contents of the letters, which had properly been admitted as evidence against the wife, does not make the letters evidence against co-resp.—GARRETT *v.* ELIATAMBY, [1926] A. C. 153 ; 95 L. J. P. C. 9 ; 134 L. T. 200.—CEYLON.

4442. *Add. Annotation :*—**Reld.** Bosworthick *v.* Bosworthick, [1927] P. 64.

4447a. ——.]—In undefended petitions for divorce the ct. should not be asked to act on evidence identifying resp. by photograph when personal identification by witnesses could easily have been effected.—PRACTICE NOTE (1925), 159 L. T. Jo. 95.

4746. *Add. Annotation :—Generally*, **Reld.** Bosworthick *v.* Bosworthick, [1927] P. 64.

4790. *Add. Annotation :*—**Reld.** Bosworthick *v.* Bosworthick, [1926] P. 159.

4882a. ——.]—Where a wife's petition is dismissed, the facts that security for the wife's costs has been ordered, & that the conduct of the wife's solr. is not open to censure, do not deprive the ct. of its discretion to give costs or to refuse them to the wife or to give costs against the wife.—BALDWIN RAPER *v.* BALDWIN RAPER & METZ, BALDWIN RAPER *v.* BALDWIN RAPER (1926), 42 T. L. R. 619.

4943. *Add. Annotation :*—**Mentd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

5071. *Add. Annotation :*—**Mentd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

5384. *Add. Citations :* [1926] P. 1 ; 95 L. J. P. 30 ; 134 L. T. 24.

5410a. —— **To increase maintenance.**]—The power to increase the amount provided by an order for permanent maintenance upon an increase in the means of a husband conferred by Matrimonial Causes Act, 1907 (c. 12), & Jud. (Consolidation) Act, 1925 (c. 49), which repeals & re-enacts the power given by the former Act, is retrospective in its operation & extends to dealing with orders made under the previous Act, namely, Matrimonial Causes Act, 1866 (c. 32).—EDMUNDS *v.* EDMUNDS, [1926] P. 202 ; 95 L. J. P. 151.

5450. *Add. Citations :*—[1926] P. 93 ; 95 L. J. P. 83 ; 135 L. T. 1 ; 42 T. L. R. 413 ; 70 Sol. Jo. 503, C. A.

5549. *Add. Annotations :*—*As to* (1) **Reld.** Hargreaves *v.* Hargreaves, [1926] P. 42. *As to* (2) **Reld.** Jagger *v.* Jagger, [1926] P. 93.

5551. *Add. Annotation :*—**Consd.** Bosworthick *v.* Bosworthick (1926), 95 L. J. P. 171.

5588. *Add. Annotation :*—**N.F.** Webster *v.* Webster & Williamson, [1926] P. 198.

5588a. —— ——.]—Although there is the fullest power to vary settlements, the ct. will regard the interests of the children as the important element for consideration in varying a settlement. Where an ante-nuptial settlement did not provide for the contingency of one of the spouses dying & the survivor marrying again, the ct., when varying the settlement after dissolution of the marriage, declined to insert in the settlement a provision enabling the husband to appoint a portion of the trust funds to a future wife & future children.—WEBSTER *v.* WEBSTER & WILLIAMSON, [1926] P. 198 ; 95 L. J. P. 97 ; 135 L. T. 670.

5596. *Add. Annotation :*—**Reld.** Bosworthick *v.* Bosworthick, [1926] P. 159.

5599. *Add. Annotation :*—*As to* (2) **Reld.** Webster *v.* Webster & Williamson, [1926] P. 198.

5600. *Add. Annotation :*—**Reld.** Webster *v.* Webster & Williamson, [1926] P. 198.

5622. *Add. Annotation :*—**Reld.** Bosworthick *v.* Bosworthick, [1926] P. 159.

5623. *Add. Annotation :*—**Reld.** Bosworthick *v.* Bosworthick, [1927] P. 64.

5623a. —— **Bond to secure annuity—Appointment of annuity.**]—A post-nuptial provision for his life made by a wife for her husband by a bond, or by the exercise of her power of appointment, giving him an annuity for life

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PART XIII. SECT. 16, SUB-SECT. 5.—B.

sb. *By jury.*]—It is not the law in Saskatchewan that damages against co-resp. must be assessed by a jury.—RIDER *v.* RIDER, [1925] 3 D. L. R. 370 ; [1925] 1 W. W. R. 1051 ; 19 Sask. L. R. 384.—CAN.

PART XIII. SECT. 16, SUB-SECT. 5.—D. (b).

4685 i. *Not punitive.*]—RIDER *v.* RIDER, [1925] 3 D. L. R. 370 ; [1925] 1 W. W. R. 1051 ; 19 Sask. L. R. 384.—CAN.

4685 ii. ——.]—TRANTER *v.* TRANTER & LAMB, [1925] N. Z. L. R. 593.—N.Z.

PART XIII. SECT. 18, SUB-SECT. 3.—C. (b).

i. —— ——.]—Although a divorce petition by a husband is decided in his favour, the wife is entitled to her costs, if she has had them secured & her defence has been *bonâ fide*.—KNIGHT *v.* KNIGHT & OWENS, [1925] 2 D. L. R. 467 ; [1925] 1 W. W. R. 824.—CAN.

PART XIII. SECT. 18, SUB-SECT. 3.—F. (e).

4953 i. *Petition by husband—Wife proved innocent.*]—*Held :* K. B. Rule 951 was not applicable, & full costs should be paid to the solr. of the successful wife.—PRESTON *v.* PRESTON & MOXLEY, [1925] 4 D. L. R. 1013.—CAN.

PART XIII. SECT. 18, SUB-SECT. 4.—C. (c) i.

4980 i. *Effect of knowledge—Liability of co-respondent for whole costs.*]—If co-resp. knew that the woman was married & a divorce is granted, he is liable for all the costs of the proceedings, including those which the husband has been compelled to pay the wife.—KNIGHT *v.* KNIGHT & OWENS, [1925] 2 D. L. R. 467 ; [1925] 1 W. W. R. 824.—CAN.

PART XIII. SECT. 20, SUB-SECT. 1.

5093 i. *King's Proctor.*]—The King's Proctor can intervene in an action for divorce in the Supreme Ct. of Alberta, & can so intervene on the ground of collusion or on the ground of material facts not brought before the ct.—ELKOWECH *v.* ELKOWECH, [1925] 4 D. L. R. 1037 ; [1925] 3 W. W. R. 705 ; *affg.*, [1925] 3 D. L. R. 876 ; [1925] 2 W. W. R. 485.—CAN.

PART XIII. SECT. 20, SUB-SECT. 4.—A. (g) ii.

sf. *Unsuccessful allegation of collusion.*]—If, on an intervention by the King's Proctor, the allegation of collusion fails, the practice in England, that the King's Proctor is not entitled to costs, is not necessarily applicable in the Supreme Ct. of Alberta.—ELKOWECH *v.* ELKOWECH, [1925] 4 D. L. R. 1037 ; [1925] 3 W. W. R. 705.—CAN.

PART XIII. SECT. 21, SUB-SECT. 4.

sk. *Action for declaration that decree void for want of jurisdiction.*]—Action for a declaration that two decrees ordering judicial separation & awarding permanent alimony were null & void for lack of jurisdiction, dismissed.—CLAMAN *v.* CLAMAN (No. 2) (1925), 35 B. C. R. 141.—CAN.

PART XIII. SECT. 22, SUB-SECT. 1.—A.

sn. *In decree of judicial separation.*]—An award of permanent alimony may be made in a decree of judicial separation itself.—WEDLEY *v.* WEDLEY, [1925] 3 W. W. R. 46.—CAN.

PART XIII. SECT. 22, SUB-SECT. 1.—F.

5325 ii. —— *Facts discovered after trial.*] Amount of permanent alimony increased on consideration of facts discovered after the trial.—WEDLEY *v.* WEDLEY, [1925] 3 W. W. R. 46.—CAN.

PART XIII. SECT. 22, SUB-SECT. 2.—B.

5360 i. *On dissolution of marriage—For guilt of wife.*]—Divorce & Matrimonial Causes Act, 1908, s. 42, does not authorise the ct., where a decree for dissolution of marriage has been obtained by a husband against a wife, to make an order on the husband for the permanent maintenance of the wife.—HARRIS *v.* HARRIS, [1926] N. Z. L. R. 274.—N.Z.

PART XIII. SECT. 22, SUB-SECT. 2.—F.

5410a i. *Jurisdiction of court to increase maintenance.*]—The ct. has no jurisdiction to increase the permanent maintenance ordered to be paid by a husband, on the ground of either the increased means of the husband or the increased necessities of the wife.—HARRIS *v.* HARRIS, [1926] N. Z. L. R. 274.—N.Z.

life expectant upon her death, are post-nuptial settlements within Matrimonial Causes Act, 1859 (c. 61), s. 5, & Jud. (Consolidation) Act, 1925 (c. 49), s. 192, & give rise on the dissolution of the marriage to the power of the ct. to vary the settlements.—BOSWORTHICK *v.* BOSWORTHICK, [1927] P. 64; 95 L. J. P. 171; 42 T. L. R. 710; 70 Sol. Jo. 857, C. A.

5624a. —— Settlement not made in contemplation of marriage.]—The expression "ante-nuptial or post-nuptial settlements," in Jud. (Consolidation) Act, 1925 (c. 49), s. 192, does not, as regards the parties whose marriage is the subject of the decree, include a settlement of the property of either spouse not made in contemplation of any particular marriage, but giving the spouse power to appoint an interest to any future wife or husband.—HARGREAVES *v.* HARGREAVES, [1926] P. 42; 95 L. J. P. 31; 134 L. T. 543; 42 T. L. R. 252.

5629. *Add. Annotation:*—**Folld.** Bosworthick *v.* Bosworthick (1926), 95 L. J. P. 171.

5630. *Add. Annotation:*—**Refd.** Webster *v.* Webster (1926), 135 L. T. 670.

5650. *Add. Annotation:*—**Refd.** Webster *v.* Webster & Williamson, [1926] P. 198.

5653. *Add. Annotation:* **Refd.** Webster *v.* Webster & Williamson, [1926] P. 198.

5700. *Add. Annotation:*—**Refd.** Bosworthick *v.* Bosworthick, [1927] P. 64.

5752. *Add. Annotation:*—**Refd.** Jagger *v.* Jagger, [1926] P. 93.

5792a. —— Father's disobedience to decree for restitution of conjugal rights.]—There is no settled practice that after a husband's disobedience to a decree for restitution of conjugal rights, the custody of children should be refused to the husband or given to the complaining wife. The paramount consideration must be the welfare of the children. W. *v.* W., [1926] P. 111; 95 L. J. P. 56; 135 L. T. 383; 42 T. L. R. 470.

6026a. —— ——.]—Petitioner, in 1919, went through a ceremony of marriage with resp. In 1923 resp. was convicted of bigamy, she having been lawfully married to A. on Dec. 26, 1903, which marriage was still subsisting. The ct. pronounced a decree *nisi* of nullity, & under the powers conferred by Jud. (Consolidation) Act, 1925 (c. 49), s. 183 (1), allowed petitioner to apply for the decree to be made absolute after the expiration of one month.—OSBORN *v.* OSBORN (OTHERWISE IVIL) (1926), 70 Sol. Jo. 388.

6088. *Add. Annotation:*—**Refd.** Diggins *v.* Diggins (1926), 43 T. L. R. 37.

6179a. —— .]—A wife's right to claim & obtain an order for maintenance from a bench of justices under Summary Juriadiction (Separation & Maintenance) Act, 1925 (c. 51), is not necessarily barred by a deed of separation which makes an allowance for her maintenance, but it must depend on the terms of the deed whether she is or is not deprived of that right.—DIGGINS *v.* DIGGINS (1926), 90 J. P. 208; 43 T. L. R. 37, D. C.

6230a. —— Attachment of husband's income—Discharge of maintenance order.]—Where a maintenance order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), has been discharged on the ground of the wife's adultery, she may nevertheless enforce payment of arrears accrued due down to the date of discharge & obtain an order for the attachment of her husband's income. Such an order is not an order "under this Act" within Summary Jurisdiction (Married Women) Act, 1895, s. 6.—OUTERBRIDGE *v.* OUTERBRIDGE (1926), 90 J. P. 204; 43 T. L. R. 33; 70 Sol. Jo. 1113, D. C.

6233a. —— Made in Dominion—Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).]—A married woman obtained in a police ct. in Australia a maintenance order against her husband ordering him to pay £5 10*s.* per week for her & her child's maintenance. An application was subsequently made by her to a ct. of summary jurisdiction in England under the above Act to confirm that order as against her husband who was resident in England. Upon that application no evidence was submitted to the justices on behalf of the husband. The justices confirmed the order with the modification or variation of substituting £2 10*s.* per week, *i.e.*, £2 for the married woman & 10*s.* for the child, in lieu of £5 10*s.* per week, they being of opinion that they were bound to reduce the amount payable under the order to the limit prescribed for such orders made by a ct. of summary jurisdiction under Summary Jurisdiction (Married Women) Act, 1895 (c. 39):—*Held:* (1) the justices had power to state a case for the opinion of the K. B. Div. on the question whether they were right in so deciding; (2) they were wrong in holding that in dealing with an order under the above Act of 1920 they were bound to limit the amount payable to the sum prescribed for orders made under the above Act of 1895.

(3) The expression "Summary Jurisdiction Acts" in sect. 7 of the above Act of 1920 does not include Summary Jurisdiction (Married Women) Act, 1895 (c. 39) (AVORY, J.).—PEAGRAM *v.* PEAGRAM, [1926] 2 K. B. 165; 95 L. J. K. B. 819; 135 L. T. 48; 90 J. P. 136; 42 T. L. R. 530; 70 Sol. Jo. 670; 28 Cox, C. C. 213, D. C.

6242a. —— Effect of—On right to recover arrears of maintenance.]—OUTERBRIDGE *v.* OUTERBRIDGE, No. 6230a, *ante*.

6250. *Add. Annotations:*—*As to* (1) **Apld.** Outerbridge *v.* Outerbridge (1926), 90 J. P. 204. **Refd.** Peagram *v.* Peagram, [1926] 2 K. B. 165.

6252. *Add. Annotations:*—**Refd.** Colchester *v.* Peck (1926), 135 L. T. 32; R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

PART XIII. SECT. 23, SUB-SECT. 3.—A.

el. ——.]—An order for *interim* alimony may be enforced by execution.—MCCLUSKY *v.* MCCLUSKY, [1925] 2 W. W. R. 649.—CAN.

PART XIII. SECT. 27, SUB-SECT. 2.—B.

6088 i. —— *Refusal to cohabit—After temporary separation.*]—A husband & wife agreed to separate immediately after their marriage until the husband, a constable in the Royal Ulster Constabulary, had sufficient length of service to permit him to support his wife. When the agreement expired the husband refused to cohabit with his wife & refused & neglected to maintain her:—*Held:* the husband had deserted the wife.—TIMONEY *v.* TIMONEY, [1926] N. 75.—IR.

6255. *Add. Annotations :*—**Refd.** Colchester *v.* Peck, [1926] 2 K. B. 366 ; R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

6271. *Add. Annotation :*—**Refd.** Mart *v.* Mart, [1926] P. 24.

6272. *Add. Annotation :*—**Distd.** Peagram *v.* Peagram, [1926] 2 K. B. 165.

6275a. —— **Order made in Dominion.**]—PEAGRAM *v.* PEAGRAM, No. 6233a, *ante*.

INCOME TAX.

Part II.—Schedule A.

51. *Add. Annotations :— As to* (2) **Reld.** Chesterman *v.* Taxation Federal Comr., [1926] A. C. 128. *Generally*, **Mentd.** Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550.

59a. . . . . .]—Applts., a limited co., owned & carried on a high-class secondary school managed by governors who were partly elected by the shareholders & partly nominated by the Crown. By the co.'s arts. no profit was to be divided amongst members. Practically the whole of the receipts of the co. arose from fees paid for pupils :—*Held :* the elements of permanence connoted by the word "foundation" were part of the essence of a public school, & as these elements were absent applts. were not entitled to an allowance on the ground that the school was a public school.—BIRKENHEAD SCHOOL, LTD. *v.* DRING (1926), 43 T. L. R. 48

Part III.—Schedule B.

77. *Add. Citations :* 70 Sol. Jo. 586 ; 10 Tax Cas. 316.

Part V.—Schedule D.

87. *Add. Annotation :* **Reld.** Grainger *v.* Maxwell, [1926] 1 K. B. 430.

90. *Add. Annotation :* **Reld.** Liverpool Corn Trade Assocn. *v.* Monks, [1926] 2 K. B. 110.

91. *Add. Citations :* [1926] 2 K. B. 110 ; 95 L. J. K. B. 519 ; 134 L. T. 756 ; 10 Tax Cas. 412.

93a. **Exchange transaction.**]— Under an agreement made on Mar. 8, 1921, for the supply of marble by a co. to building contractors, the contractors agreed to advance £20,000 of the price, percentage deductions being made from the amount due on each consignment of marble until the advance had been repaid. On Mar. 17, 1921, the £20,000 was paid to the co., & in anticipation of the marble being purchased in Italy, though not till the autumn of 1921, the co. at once arranged for the conversion of the greater part of the £20,000 into lire at one hundred & three to the £, & a lira account was opened In May, 1921, the lira had appreciated in value, &, as the money was not yet required by the co., their nominee, without the co.'s knowledge or authority, directed the sale of the balance of the lira account, & at seventy-two to the £ the lire realised a profit of £6,707, which was received by the co. The lire were subsequently repurchased for the purposes of the contract for £19,386, which was allowed as a deduction from the co.'s

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PART III.

77 i. . . . . — — *Poultry farm.*] A poultry farm consisted of thirty-three acres of land, all of which was in grass except half an acre upon which green crops were grown for consumption by the poultry in winter along with other feeding stuffs. A permanent stock of about one thousand head of poultry was kept, & in addition forty-six sheep were grazed on the land, & some of the grass was cut for hay : — *Held :* the land was occupied for the purpose of husbandry, in respect that the fruits of the soil were used to a material extent for the sustenance of the poultry, & the poultry farmer was entitled to be assessed on the profits of the business under Schedule B., & not under Schedule D.—LEAN *v.* INLAND REVENUE, [1926] S. C. 15 ; 10 Tax Cas. 341.—**SCOT.**

PART V. SECT. 1, SUB-SECT. 1.

sd. *Distribution of bonus—No option to shareholders to take cash—Distribution by company as capital.*]—A co. resolved that its accumulated profits should be distributed as a bonus amongst the shareholders, & that the directors should be authorised to distribute such number of unissued shares of £1 each paid up to 10s. as should be equivalent to the amount to be capitalised in satisfaction of such bonus ; & it was agreed that the co. should allot & issue to each shareholder his respective proportion of the unissued £1 shares each credited as paid up to 10s., that the shares should be credited as paid up to 10s., & that the shares so credited should be accepted in satisfaction of the bonus. In the books of the co. each shareholder was credited with his proportion of the bonus in payment of 10s. in respect of each of the shares so allotted & issued to him :—*Held :* the proportion of the bonus so credited to each shareholder was "profits or bonus credited" to him within Income Tax Assessment Act, 1915–1921, s. 14 (*b*), & was properly included in his income.—JAMES *v.* FEDERAL COMR. OF TAXATION (1924), 34 C. L. R. 404.—**AUS.**

sl. *Distribution of property on discontinuance of business by company—What is "income."*]—A reserve made up of accretions to the value of real estate & goodwill is not "income" within Income War Tax Act, 1917, s. 3 (9), but a reserve made up to trading profits or that portion of a co.'s income which has not been paid out is undistributed income of the co., unless before the distribution it has become capital.—*Re* ANDERSON ESTATE, [1925] 4 D. L. R. 116 ; [1925] 3 W. W. R. 312 ; 35 Man. L. R. 279.—**CAN.**

s i. . . . . .]—From the date of incorporation to 1920 a co.'s profits were allowed to accumulate until G., the manager & owner of all the shares, declared a dividend of 92 per cent. amounting to $40,000 paid out of such accumulated profits :—*Held :* such dividend was not a return of capital but income & subject to taxation.—GAGNE *v.* FINANCE MINISTER, [1925] Exch. C. R. 19.—**CAN.**

sk. *Income of accumulated fund—Under will for benefit of testator's children after twenty-one years.*]—*Held* such income was taxable under Income War Tax Act, 1917, as amended by 10 & 11 Geo. 5, c. 49, s. 41.—McLEOD *v.* CUSTOMS & EXCISE MINISTER, [1925] Exch. C. R. 105.—**CAN.**

k. Read now "99a i."

sm. *Money remitted from branch office.*]—Money remitted to the head-quarters of a firm in British India from a branch situated in a foreign country, is presumed to be profits & not capital, & is assessable to income tax.—*Re* MURUGAPPA CHETTIAR (1925) I. L. R. 49 Mad. 485.—**IND.**

profits for income tax purposes:—*Held:* in computing the co.'s profits for the purposes of assessment to income tax for the year 1922–23 the £6,707 was not a profit arising out of the contract for the supply of marble, but was merely an appreciation of a temporary investment, & was not assessable to income tax as part of the profits of the co.'s trade.—McKINLAY v. JENKINS (H. T.) & SON, LTD. (1926), 10 Tax Cas. 372.

95. *Add. Annotation:*—**Reld.** I. R. Comrs. v. Fisher's Exors., [1926] A. C. 395.

97. *Add. Citation:*—42 T. L. R. 685, C. A.

99. *Add. Citations:*—*sub nom.* JERSEY'S (LORD) EXECUTORS v. BASSOM, DERBY (LORD) v. BASSOM, 135 L. T. 274; 10 Tax Cas. 357.

99a. Repaid excess profits duty.]—Where a trader was assessed to income tax on the amount of excess profits duty repaid to him:—*Held:* he had been rightly assessed.—HILL v. MATHEWS (1925), 10 Tax Cas. 25.

99b. Profits made in illegal business.]—Income Tax Acts are not necessarily restricted in their application to lawful businesses only. The question is one of construction of the particular words used.—CANADIAN MINISTER OF FINANCE v. SMITH (1926), 42 T. L. R. 731; 70 Sol. Jo. 941; *sub nom.* MINISTER OF FINANCE v. SMITH, 95 L. J. P. C. 193, P. C.

104. *Add. Annotation:*—**Reld.** Brighton College v. Marriott, [1926] A. C. 192.

113. *Add. Citation:* 10 Tax Cas. 20.

114. *Add. Citations:* (1926), 43 T. L. R. 116; 71 Sol. Jo. 18, H. L.; *affg.*, [1926] 1 K. B. 550. *Add. Annotation:* **Reld.** I. R. Comrs. v. Newcastle Breweries (1926), 95 L. J. K. B. 930.

118. *Add. Annotation:* **Reld.** Jersey's Exors. v. Bassom, Derby v. Bassom (1926), 135 L. T. 274.

120. *Add. Annotation:* **Reld.** Hall v. I. R. Comrs. (1926), 135 L. T. 759.

127. *Add. Citations:* 95 L. J. K. B. 356; 10 Tax Cas. 213.

131. *Add. Annotation:*—*As to* (2) **Reld.** Fleming v. Wilkinson (1925), 10 Tax Cas. 416.

131a. ——.]—Applt. was employed by a British co. as general manager of their sugar estates in Demerara where he lived & where his salary was wholly earned & paid. He was in England on leave from June to Sept. 1918, & during that time the co., at his request, placed to the credit of his banking account in England £525, being an advance on account of salary falling due before Apr. 5, 1919, & an assessment to income tax was made upon him for the year 1918–19 in respect of this sum under Schedule D., Case V. His wife had been for several years, & was throughout the year 1918–19, the owner of a house in Kent, towards the upkeep of which he contributed out of other income arising in England, but since Sept. 1917, she had been mainly living with him in Demerara, the house being left unoccupied. During his stay in England in 1918, applt. lived for the most part in hotels & in fact spent only one night at the house. The Special Comrs. having decided that applt. was resident in the United Kingdom during the year ending Apr. 5, 1919, & that he had been rightly assessed to income tax in respect of the above sum as having been received in the United Kingdom during that year from an employment abroad:—*Held:* inasmuch as applt.'s salary was payable in Demerara, the sum credited to him in the United Kingdom must be regarded as remitted to him from abroad & as constituting income from a foreign possession chargeable under Schedule D., Case V.—FLEMING v. WILKINSON (1925), 10 Tax Cas. 416, C. A.

131b. ——.]—Consideration of the meaning of the expressions "resident" & "ordinarily resident" in Income Tax Act, 1918 (c. 40).—LEVENE v. INLAND REVENUE COMRS. (1926), 95 L. J. K. B. 998; 42 T. L. R. 743.

136. *Add. Annotation:* **Reld.** Baelz v. Public Trustee, [1926] Ch. 863.

139. *Add. Annotation:*—*As to* (1) **Distd.** Noble v. Mitchell (1926), 43 T. L. R. 102.

142a. ——.]—**By resident director under power of attorney—Profits retained abroad.**]—Applts., insurance & reinsurance brokers & agents in London, had an office in Paris for the purpose of direct insurance on behalf of cos. for which they acted as agents, & applts. in some cases represented the same cos. in London & in Paris. A resident director of applts. had the sole conduct of the Paris business under a power of attorney. The results of the Paris business were incorporated in applts.' balance-sheets, but no part of the French profits was remitted to London:—*Held:* as the power of attorney did not, except as against third parties, divest the directors in London of their power of control over the French business, applts. were assessable to income tax on the whole of their profits, including those of the Paris office.—NOBLE (H. W.), Exrs. v. MITCHELL (1926), 43 T. L. R. 102.

144. *Add. Annotations:* **Apld.** Todd v. Egyptian Delta Land & Investment Co. (1926), 43 T. L. R. 70. **Reld.** Baelz v. Public Trustee, [1926] Ch. 863.

144a. ——.]—Although a co., which is registered in England but has its control & owned a line situate wholly in Southern Rhodesia. C. co. had its head office & general control in England, but also had offices in Buluwayo, where a general manager & staff conducted & managed the line. C. co. worked the lines of A. co. & B. co. as one with its own, & the three cos. shared the profits & losses of the joint venture upon a specified basis:—*Held:* A. co. & B. co. were in partnership with C. co., & the partnership business was carried on within Southern Rhodesian territory by the latter co. within Southern Rhodesia Income Tax Ordinance 20 of 1915.—RHODESIA RYS. v. COMR. OF TAXES, [1925] App. D. 436.—S. AF.

PART V. SECT. 2, SUB-SECT. 1.—A.

119 l. ——.]—*Poultry farm.*]—LEAN v. INLAND REVENUE, No. 77 l, *ante*.—SCOT.

sp. *Difference in value of stock-in-trade on sale of business.*]—Resp. & his partner sold their business to a co. They treated their stock-in-trade as being of the value of £43,357, but the co. treated it as being worth £58,383:—*Held:* the difference between the two sums was not a profit derived from the business of the partnership, & resp. was not assessable for income tax in respect of his share of such difference.—DOUGHTY v. COMR. OF TAXES (1927), 163 L. T. Jo. 114.—N.Z.

PART V. SECT. 2, SUB-SECT. 2.—C.

144 l. *Registered office in England—Business & management abroad—General control by English office—Dual residence.*]—A co. can carry on business in more places than one, & in places where it does not reside.

Three railway cos. were incorporated in England. A. co. owned a line of railway situate wholly in Portuguese East Africa. B. co. owned a line situate wholly in Portuguese East Africa with the exception of six miles situate in Southern Rhodesia, & C. co.

management abroad, resides where it is controlled & managed, yet it does not reside there exclusively, but it necessarily resides in England so as to be liable to income tax, because it is obliged by law to perform in England certain duties which cannot be performed from abroad, such as the keeping of a register of shareholders & allowing the public to inspect the register.—TODD *v.* EGYPTIAN DELTA LAND & INVESTMENT CO., LTD. (1926), 43 T. L. R. 70.

155. *Add. Annotation* :—**Mentd.** Baelz *v.* Public Trustee, [1926] Ch. 863.

166. *Add. Annotations* :—**Reld.** Maclaine *v.* Eccott, [1926] A. C. 424; Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744; Whitney *v.* I. R. Comrs., [1926] A. C. 37.

168. *Add. Annotations* :—**Consd.** Maclaine *v.* Eccott, [1926] A. C. 424. **Apld.** Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744.

169. *Add. Annotation* :—**Reld.** Whitney *v.* I. R. Comrs., [1926] A. C. 37.

172. *Add. Citations* :—[1926] A. C. 424; 95 L. J. K. B. 616; 135 L. T. 66; 10 Tax Cas. 481.

Add. Annotation :—**Consd.** Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744.

173. *Add. Annotations* :—*As to* (1) **Reld.** Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744. *As to* (2) **Apld.** Gavazzi *v.* Mace, Gavazzi *v.* I. R. Comrs., Boyd *v.* Stephen (1926), 135 L. T. 634.

179. *Add. Citation* :—*sub nom.* GAVAZZI *v.* MACE, GAVAZZI *v.* INLAND REVENUE COMRS., BOYD (T. L.) & SONS, LTD. *v.* STEPHEN, 135 L. T. 634.

181. *Add. Citations* :—[1926] A. C. 424; 95 L. J. K. B. 616; 135 L. T. 66; 10 Tax Cas. 481.

Add. Annotation :—**Reld.** Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744.

185. *Add. Annotations* :—*As to* (1) **Reld.** Maclaine *v.* Eccott, [1926] A. C. 424; Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744. *As to* (2) **Consd.** Scales *v.* Atalanta S.S. Co. of Copenhagen (1925), 134 L. T. 411. **Reld.** Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744.

186. *Add. Annotations* :—**Consd.** Maclaine *v.* Eccott, [1926] A. C. 424. **Reld.** Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744.

188. *Add. Annotation* :—**Mentd.** Baelz *v.* Public Trustee, [1926] Ch. 863.

208. *Add. Annotations* :—*As to* (4) **Folld.** Elliott *v.* Duchess Mill (1926), 95 L. J. K. B. 963. *As to* (5) **Reld.** Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550. *Generally*, **Reld.** Bette *v.* Clare & Heyworth, [1926] 2 K. B. 289.

210. *Add Citations* :—*revsd.* [1926] 2 K. B. 289; 95 L. J. K. B. 872; 135 L. T. 339; 42 T. L. R. 479, C. A.; *revsd.* (1927), 163 L. T. Jo. 320, H. L.

212. *Add. Citations* :—[1927] 1 K. B. 182; 95 L. J. K. B. 963; 42 T. L. R. 707; 70 Sol. Jo. 891, C. A.

222a. **Company—Payment to director as inducement to retire.**]—*Held* : a payment by a co. to a director in order to induce him to retire, in circumstances in which the other directors had come to the conclusion that it was essential in the interests of the co. that he should retire, was a business expense deductible from the co.'s profits for purposes of income tax.—MITCHELL *v.* NOBLE (B. W.), LTD. (1926), 43 T. L. R. 100.

236. *Add. Annotation* :—**Reld.** Finance Minister *v.* Smith (1926), 95 L. J. P. C. 193.

249. *Add. Annotations* :—**Consd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205. **Reld.** Mitchell *v.* Noble (1926), 43 T. L. R. 100.

251. *Add. Annotation* :—**Reld.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205.

260. *Add. Annotation* :—*As to* (2) **Distd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205.

262. *Add. Annotation* :—**Reld.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205.

264. *Add. Citation* :—*sub nom.* ATHERTON *v.* BRITISH INSULATED & HELSBY CABLES, LTD., 10 Tax Cas. 155.

Add. Annotation :—**Reld.** Mitchell *v.* Noble (1926), 43 T. L. R. 100.

265. *Add. Annotation* :—**Reld.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205.

268a. —— **Books used for professional purposes—Solicitor.**]—The word "plant" in Finance Act, 1925 (c. 36), s. 16, does not include a solr.'s books which he consults for professional purposes.—DAPHNE *v.* SHAW (1926), 43 T. L. R. 45.

278. *Add. Annotation* :—**Reld.** Brighton College *v.* Marriott, [1926] A. C. 192.

287. *Add. Annotation* :—**Reld.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205.

288. *Add. Annotation* :—**Reld.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205.

290. *Add. Annotation* :—**Distd.** Mitchell *v.* Noble (1926), 43 T. L. R. 100.

PART V. SECT. 2, SUB-SECT. 3.—A.

st. *Salary earned & received in Canada by person residing in foreign country.*]—*Held* : such person was not assessable by the corpn. of the city where he earned his salary.—*Re* FOX & WINDSOR CORPN. (1925), 57 O. L. R. 243.—CAN.

PART V. SECT. 2, SUB-SECT. 3.—B.

193 i. *Assessment on agent—Foreign shipping company—What deductions allowed.*]—In the assessment of the income of a shipping co., of which the principal place of business is out of Australia & which carries passengers, etc., shipped in Australia, from the sum which represents 10 per cent. of the amount payable to it in respect of the carriage of passengers, etc., & upon which the agent of the co. is liable to pay income tax, no deduction can be made of so much of the assessable income as is available for distribution & is distributed to the members or shareholders of the co.—UNION S.S. CO. OF NEW ZEALAND, LTD. *v.* FEDERAL COMR. OF TAXATION (1924), 35 C. L. R. 209; 31 Argus L. R. 237.—AUS.

PART V. SECT. 2, SUB-SECT. 7.—E. (b).

sw. Railway company—Expense of making deviations.]—*Held* : sums expended by a railway co. in making deviations in its line from time to time were expenditure of a capital nature.—RHODESIA RYS. *v.* COMR. OF TAXES, [1926] App. D. 438.—S. AF.

PART V. SECT. 2, SUB-SECT. 7.—F.

253 i. *Loss on advances to saw-miller to secure supplies of timber—Advances written off as bad debts on liquidation of saw-miller.*]—*Held* : the loss was properly deducted.—HOGG & CO., LTD. *v.* COMR. OF TAXES, [1925] N. Z. L. R. 306.—N.Z.

PART V. SECT. 2, SUB-SECT. 7.—J.

b i. —— *Diminished value of rails & sleepers.*]—*Held* : a railway co. was not entitled to any deduction for such diminished value.—RHODESIA RYS. *v.* COMR. OF TAXES, [1925] App. D. 436.—S. AF.

293. *Add. Annotation* :—**Refd.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 95 L. J. K. B. 990.

296. *Add. Annotation* :—*As to* (2) **Consd.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 95 L. J. K. B. 990.

297. *Add. Annotation* :—**Consd.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 95 L. J. K. B. 990.

300. *Add. Annotations* :—**Consd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281. **Distd.** Liverpool Corn Trade Assocn. *v.* Monks, [1926] 2 K. B. 110. **Apld.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 95 L. J. K. B. 990.

302. *Add. Annotation* :—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205.

307a. **Accident insurance—Mutual society.**]—A mutual insurance assocn. was formed, its sole activity being the indemnity of its members, who were coal-owners, against liability for compensation in respect of fatal accidents to workmen. The members of the assocn. were the persons protected by it, every member being liable to contribute a sum not exceeding £25 in the event of a winding up. The assocn. formed a general fund by making calls upon members proportionate to the wages paid in their works for the time being, & the balance of the ordinary call fund was transferred to a reserve fund, into which any extraordinary calls were also paid. A member, on retirement, was entitled to get back in cash a proportion of his share in the above reserve fund, but, apart from this, members had no right at all to the cash in the reserve fund, though the interest accruing on the reserve fund could be used in diminution of members' calls :—*Held* : (1) the sums paid by the members to the assocn. were admissible deductions in computing the profits made by a member for the purpose of assessment to income tax, as the money was laid out by the respective members on a true insurance principle ; (2) the surplus funds of the assocn. were not assessable to income tax, as the assocn. was mere machinery for the purpose of enabling subscribing members to insure themselves.—THOMAS *v.* EVANS (RICHARD) & CO., LTD., JONES *v.* SOUTH-WEST LANCASHIRE COALOWNERS' ASSOCN., LTD. (1926), 95 L. J. K. B. 990 ; 135 L. T. 673 ; 42 T. L. R. 703, C. A.

316. *Add. Annotation* :—*As to* (3) **Apld.** Whelan *v.* Henning, [1926] A. C. 293.

317. *Add. Citations* :—[1926] 1 K. B. 430 ; 10 Tax Cas. 139.

375. *Add. Annotation* :—**Consd.** Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550.

378. *Add. Annotation* :—**Refd.** *Re* Jauncey, Bird *v.* Arnold, [1926] Ch. 471.

430. *Add. Annotations* :—**Refd.** I. R. Comrs. *v.* Blackwell (1925), 134 L. T. 372 ; Archer-Shee *v.* Baker (1926), 95 L. J. K. B. 929.

433. *Add. Annotations* :—*As to* (1) **Refd.** Archer-Shee *v.* Baker (1926), 95 L. J. K. B. 929 ; Whitney *v.* I. R. Comrs., [1926] A. C. 37. *Generally*, **Mentd.** Gregg *v.* Richards, [1926] Ch. 521.

442. For the existing paragraph substitute the following paragraph :—

——— ——— ———.]—Testator, a citizen of the United States, left his property to trustees in that country to be applied to the use of his daughter for life. The fund constituted under the will consisted of foreign Govt. securities, stocks & shares, & other foreign property. Applt. married testator's daughter, & the trustees remitted the income to her in England, less costs, taxes, & expenses. Applt. was assessed to income tax on this income under Schedule D. :—*Held* : the balance paid to applt.'s wife did not fall within Case IV., rule 1, of Schedule D., but arose from "foreign possessions" under Case V., & this income, though it did not come under rule 1 of the latter case, which applies to the income from foreign stocks, shares, or rents, whether the income is remitted to the United Kingdom or not, came under rule 2, which deals with foreign possessions other than stocks, shares, or rents, & requires the tax to be computed only on the amount annually remitted to the United Kingdom.—ARCHER-SHEE *v.* BAKER (1926), 95 L. J. K. B. 929 ; 135 L. T. 305 ; 42 T. L. R. 594 ; 70 Sol. Jo. 733, C. A.

445. *Add. Annotation* :—**Mentd.** Baelz *v.* Public Trustee, [1926] Ch. 863.

446a. ——— ——— ——— **Advance on account of salary paid into banking account in United Kingdom.**]—FLEMING *v.* WILKINSON, No. 131a, *ante*.

450. *Add. Citations* :—95 L. J. K. B. 304 ; 10 Tax Cas. 263, H. L.
Add. Annotation :—**Apld.** Grainger *v.* Maxwell, [1926] 1 K. B. 430.

453. *Add. Annotations* :—**Folld.** Lyons *v.* Cowcher (1926), 10 Tax Cas. 438. **Apprvd.** Martin *v.* Lowry, Martin *v.* I. R. Comrs. (1926), 43 T. L. R. 116.

457a. ——— ——— ——— **Director's commission on underwriting shares.**]—Applt., a co. director, received commission from a syndicate for underwriting shares in a new co., & he was assessed to income tax under Schedule D. for the year 1919-20 in respect of the commission. He was not concerned in any other underwriting transaction in 1919, 1920 & 1921 :—*Held* : the commission was an annual profit or gain within Schedule D., Case VI., & applt. had been properly assessed to income tax in respect of such commission.—LYONS *v.* COWCHER (1926), 10 Tax Cas. 438.

462. *Add. Annotations* :—**Refd.** Brighton College *v.* Marriott, [1926] A. C. 192 ; Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550.

471. *Add. Citation* :—10 Tax Cas. 73.

PART V. SECT. 9.

479 i. *Exemption of charities—Charitable purposes.*]—By the law of Scotland a trust for "charitable or benevolent" purposes is a trust for "charitable" purposes alone, & is a trust for "charitable purposes only" within 1918 Act.—JACKSON'S TRUSTEES *v.* INLAND REVENUE, [1926] S. C. 519 ; 10 Tax Cas. 466.—SCOT.

ss. Exemption of person not ordinarily resident in United Kingdom—Holder of securities issued free of tax.]—Appt., the holder of certain securities to which 1918 Act, s. 46 (1), applied, claimed exemption from income tax on the ground that she was not ordinarily resident in the United Kingdom. Appt. had been in the habit of going abroad for the greater part of the year, spending only the summer in the United Kingdom where she had a house in Glasgow. In 1916 she gave up her house & sold her furniture, & thereafter she lived in hotels. Some of her personal belongings were stored in London where she also kept a bank account, & she had an address at a bank in Glasgow to which letters could be sent. During the two financial

472a. — — — — — **Relief of members of medical association & dependants in necessitous circumstances.**]—Two societies whose funds were applied entirely to making grants for the relief of subscribing members or their dependants in necessitous circumstances:—*Held:* charities, & entitled to exemption from income tax.—INLAND REVENUE COMRS. *v.* SOCIETY FOR RELIEF OF WIDOWS & ORPHANS OF MEDICAL MEN, INLAND REVENUE COMRS. *v.* MEDICAL CHARITABLE SOCIETY FOR WEST RIDING OF YORKSHIRE (1926), 42 T. L. R. 612; 70 Sol. Jo. 837.

472b. — — — — **Temperance reform.**]—A society whose main object was "united action to secure legislative & other temperance reform": —*Held:* not a body of persons established for charitable purposes only, & its income, inasmuch as it was not applied to charitable purposes only, was not entitled to exemption from income tax.—INLAND REVENUE COMRS. *v.* TEMPERANCE COUNCIL OF CHRISTIAN CHURCHES OF ENGLAND & WALES (1926), 42 T. L. R. 618.

472c. — — — — **Seaside boarding-house with reduced charges.**]—By a declaration of trust "a home or place of residence" was founded & endowed, "where persons requiring temporary rest & change of air for the benefit of their health may obtain same." About half the income of the home came from payments by visitors, who included convalescents, persons needing rest & change, & holiday applicants: —*Held:* since on the construction of the trust deed there was throughout an overriding charity which fulfilled the character of a charitable convalescent home, the trustees were entitled to exemption from income tax on the ground that the trust was established for charitable purposes only.—INLAND REVENUE COMRS. *v.* ROBERTS MARINE MANSIONS TRUSTEES (1926), 43 T. L. R. 270 C. A.

473. *Add. Annotation:*—**Refd.** Brighton College *v.* Marriott, [1926] A. C. 192.

476a. — — — — **Temperance reform.**]—INLAND REVENUE COMRS. *v.* TEMPERANCE COUNCIL OF CHRISTIAN CHURCHES OF ENGLAND & WALES, No. 472b, *ante.*

483. *Add. Annotation:*—**Apld.** Marie Celeste Samaritan Soc. of London Hospital *v.* I. R. Comrs. (1926), 43 T. L. R. 23.

483a. — — — — —

muneration for their services such a sum as after the provision of income tax would entitle them to receive the further sum of £25,000 free of tax :—*Held :* resp.'s share of such additional remuneration was not a perquisite, but was assessable by additional assessments under Income Tax Act, 1918 (c. 40), Schedule E., rr. 1 & 5.—DAUNCEY v. HOWLETT (1926), 135 L. T. 270 ; 10 Tax Cas. 454.

514. *Add. Annotation :* **Reld.** Hartland v. Diggines, [1926] A. C. 289.

519. *Add. Citation :* 10 Tax Cas. 118.

530. *Add. Annotation :* **Reld.** Reed v. Seymour, [1926] 1 K. B. 588.

Part VII.—General Allowances, Exemptions and Abatements.

545a. —— **Whether vested or contingent interest.**] —Resp., who came of age in July, 1922, claimed relief under Income Tax Act, 1918 (c. 40), s. 25, in respect of the accumulated income of a fund given to his parents by a relation in 1902 with a letter, which, after referring to a gift for the benefit of resp.'s brother, continued : "I also hand you a stock receipt representing the investment of £500 in Consols which, with the accruing dividends thereon, will fall due to your youngest boy (resp.) as he attains the age of twenty-one years. You will observe that you & W. are practically trustees for carrying this out" :—*Held :* resp. took a vested & not a contingent interest in the gift, & was not entitled to the relief conferred by the sect. in respect of the income of the fund which had been accumulated for his benefit. ROBERTS v. HANKS (1926), 134 L. T. 751 ; 10 Tax Cas. 351.

546. *Add. Annotation :*—**Reld.** Whitney v. I. R. Comrs., [1926] A. C. 37.

549a. —— **Policy on joint lives of two persons — Payment of premium shared equally.**] — A person who has entered into an insurance on the joint lives of himself & another person at a single premium which is shared equally between them, has not "made an insurance on his life" within Income Tax Act, 1918 (c. 40), s. 32 (1), & is not entitled under that sect. to a deduction of the amount of the annual premium from his taxable profits.—WILSON v. SIMPSON, [1926] 2 K. B. 500 ; 95 L. J. K. B. 885 ; 135 L. T. 766 ; 42 T. L. R. 690.

552. *Add. Annotation : As to* (1) **Consd.** Gold Fields American Development Co. v. Consolidated Gold Fields of South Africa, [1926] Ch. 338.

553. *Add. Annotation :* **Consd.** Gold Fields American Development Co. v. Consolidated Gold Fields of South Africa, [1926] Ch. 338.

555. *Add. Annotation :* **Consd.** Gold Fields American Development Co. v. Consolidated Gold Fields of South Africa, [1926] Ch. 338.

556. *Add. Citations :* [1926] Ch. 338 ; 95 L. J. Ch. 329 ; 135 L. T. 14.

557. *Add. Citation :* 10 Tax Cas. 50.

Part VIII.—Miscellaneous Provisions Applicable to the Duties Generally.

567. *Add. Citations :*— 135 L. T. 744 ; 42 T. L. R. 704, C. A.

577. *Add. Annotation :*—**Reld.** Whitney v. I. R. Comrs., [1926] A. C. 37.

580. *Add. Annotation : As to* (3) **Reld.** L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

PART VII. SECT. 1.

ad. Mining company—Reconstruction—Right of shareholders to deduction in respect of calls paid—Income Tax Assessment Act, 1915-1918, ss. 18 (1), 53.]—JAQUES v. FEDERAL COMR. OF TAXATION (1924), 34 C. L. R. 328 ; 31 Argus L. R. 61.—AUS.

PART VIII. SECT. 1, SUB-SECT. 1.

k 1. ——.]—In Oct. 1923, a trustee was assessed in respect of the income of an estate, which he was directed to receive & accumulate until 1933, & then to distribute among persons not ascertainable until the date fixed for distribution :—*Held :* the assessment being made in 1923 for taxes payable in 1924, the validity of the assessment should be determined by reference to the Act in force at the date of the assessment.—*Re* McLEOD & WINDSOR CORPN., [1925] 3 D. L. R. 89 ; 57 O. L. R. 15.—CAN.

PART VIII. SECT. 1, SUB-SECT. 4.

sl. *Agreement to operate telegraph system—Undertaking by operating company to pay owning company's income tax on annual payments under agreement.*]—*Held :* such undertaking could not be pleaded by the owning co. in answer to the Crown's claim for income tax.—R. v. MONTREAL TELEGRAPH CO. & GREAT NORTH WESTERN TELEGRAPH CO. OF CANADA, [1925] Exch. C. R. 79.—CAN.

Part IX.—Procedure after Assessment.

618. *Add. Annotation :*—**Reld.** Owl Mill Co. (1920), Ltd. *v.* Croft, Elliott *v.* Duchess Mill (1926), 95 L. J. K. B. 635.

629a. —— **Discretion of court.**]—Under 1918 Act, s. 149, it is within the discretion of the High Ct. to remit a case to the Comrs. for re-hearing & decision without requiring that it be amended & returned for the decision of the ct. itself.—EDWARDS *v.* "OLD BUSHMILLS" DISTILLERY CO., LTD. (IN LIQUIDATION) (1926), 10 Tax Cas. 285, H. L.

Annotation :—**Reld.** Aylmer *v.* Mahaffy (1925), 10 Tax Cas. 594.

632a. **Exchanging points of argument.**]—(1) It is not necessary to exchange points of argument, but either party may, not later than ten days before the argument, give to the other party notice in writing of any point intended to be made which would be likely to take the other party by surprise, in default of which the ct. may adjourn the argument on such terms as may be just.

(2) A case may be set down by either party subject to the same conditions in all respects as cases have heretofore been set down by the party at whose instance they have been stated.—PRACTICE NOTE, [1926] W. N. 250

632b. **Setting down case.**]—PRACTICE NOTE, No. 632a, *ante*.

633a. **On appeal against assessment on person carrying on non-resident's regular agency—Order for costs made against agent.**]—WILCOCK *v.* PINTO & CO. (IN THE NAME OF KUMMER) (1925), 10 Tax Cas. 415, C. A.

Part XI.—The Super Tax.

646a. **Party chargeable dying insolvent—Super tax due in respect of several years—To what years appropriation of payments made.**]—*Re* CAMPBELL, COMMERCIAL BANK OF SCOTLAND *v.* CAMPBELL (1923), 10 Tax Cas. 585.

648. *Add. Annotation :*—**Apprvd.** Whitney *v.* I. R. Comrs., [1926] A. C. 37.

654. *Add. Annotation :*—*As to* (1) **Reld.** Whitney *v.* I. R. Comrs., [1926] A. C. 37.

661. *Add. Citations :*—[1926] 2 K. B. 246; 95 L. J. K. B. 694; 134 L. T. 699.
Add. Annotation :—**Reld.** I. R. Comrs. *v.* Wright, [1927] 1 K. B. 333.

662. *Add. Citations :*—134 L. T. 754; 10 Tax Cas. 351.

662a. —— —— ——.]—A co. having a sum consisting of accumulated profits standing to the credit of its reserve fund & being empowered so to do by its arts. of assocn., passed resolutions that its capital should be increased by the creation of new shares, & that it was desirable to capitalise the sum & make it available for distribution among the shareholders as capital free from income tax, & further resolutions pursuant to which the sum was applied in payment up of the new shares, which were to be offered to the shareholders in proportion to their existing shares with an option to them either to accept the new shares so fully paid up, or to take their nominal value in cash. A shareholder having accepted the whole of the new shares offered to him as fully paid, was assessed to super tax in respect thereof. The Special Comrs. having discharged the assessment :—*Held :* so far as the question raised was a matter of fact, it was concluded against the revenue

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PART IX. SECT. 2, SUB-SECT. 2.

600 l. *The hearing—Whether taxpayer entitled to be heard.*)—In order to constitute a valid determination of the comr. under Income Tax Assessment Act, 1922, s. 21 (1), it is not necessary that the taxpayer shall have been heard.—FEDERAL COMR. OF TAXATION *v.* AUSTRALIAN TESSELATED TILE CO. PROPRIETARY, LTD. (1925), 36 C. L. R. 110; 31 Argus L. R. 218.—AUS.

al. *"Determination."*)—The word "determination" in Income Tax Assessment Act, 1922, s. 21 (1), implies a communication of the determination to the taxpayer.—FEDERAL COMR. OF TAXATION *v.* AUSTRALIAN TESSELATED TILE CO. PROPRIETARY, LTD. (1925), 36 C. L. R. 110; 31 Argus L. R. 218.—AUS.

PART IX. SECT. 2, SUB-SECT. 2.—C.

e l. —— *To compel alteration of assessment.*)—The High Ct. will not, by mandamus or process of a like nature, compel the Federal Comr. of Taxation to exercise the power given him to make alteration in, or additions to, any assessment, where he does not think that such alterations or additions are necessary in order to insure the completeness & accuracy of the assessment.—*Ex p.* CARPATHIA TIN MINING CO., LTD. (1924), 35 C. L. R. 552; 31 Argus L. R. 22.—AUS.

PART X.

j l. —— *Laying information—Within what time.*)—Criminal Code, s. 1142, applies to prosecutions under Income War Tax Act, 1917 (c. 28).—R. *v.* DONEN, [1925] 1 D. L. R. 1141; [1925] 1 W. W. R. 567; 43 Can. Crim. Cas. 271; 34 Man. L. R. 597.—CAN.

j ll. —— —— ——.]—An information under Income War Tax Act, 1917 (c. 28), s. 8, for failing to make a return of income within thirty days after demand made therefor, must be laid within six months from the day or days as to which accused is charged with being in default, Criminal Code, s. 1142, being applicable thereto.—R. *v.* MERRIAM, [1925] 2 D. L. R. 411; [1925] 1 W. W. R. 819; 43 Can. Crim. Cas. 325.—CAN.

j lll. —— *By "person who has not made return"—Who is.*)—Where on being charged for failing to make a return after demand made therefor, accused satisfies the magistrate that he had made a return when it was first due, he is not a "person who has not made a return" within Income War Tax Act, 1917 (c. 28), s. 8, & is under no liability for failing to make another return upon the demand.—R. *v.* BATTERS, [1925] 1 D. L. R. 726; [1925] 1 W. W. R. 275; 35 Man. L. R. 146.—CAN.

j lv. —— *Appeal—"Criminal cause."*)—Resp. having pleaded guilty on an information laid for a breach of Income War Tax Act, 1917 (c. 28), s. 8, the magistrate decided that he could impose a lesser penalty than that imposed by sect. 9 (1), & his decision was affirmed on appeal :—*Held :* special leave to appeal to the Supreme Ct. could not be granted, the proceeding being a "criminal cause" within Supreme Ct. Act, s. 36.—R. *v.* BELL, [1925] 2 D. L. R. 57; [1925] S. C. R. 59; 43 Can. Crim. Cas. 266.—CAN.

PART XI., SECT. 2, SUB-SECT. 2.—C.

ap. *Income received by settlor under voluntary settlement—Deductions—Outgoings by trustees.*)—*Held :* only the free income paid over to the settlor after payment of the outgoings by the trustees, with the appropriate addition for income tax, was his income for super tax purposes.—INLAND REVENUE COMRS. *v.* HAMILTON (LORD) OF DALZELL (1926), 10 Tax Cas. 490.—SCOT.

by the finding of the Comrs., & so far as it was a matter of law, it was concluded against the revenue by *Bouch* v. *Sproule* (1887), 12 App. Cas. 385, *Inland Revenue Comrs.* v. *Blott, Inland Revenue Comrs.* v. *Greenwood*, No. 663, & *Inland Revenue Comrs.* v. *Fisher's Executors*, No. 664, the co. being dominant for all purposes, & the shares not bearing the character of income.—INLAND REVENUE COMRS. *v.* WRIGHT, [1927] 1 K. B. 333; 95 L. J. K. B. 982; 135 L. T. 718, C. A.; *revsg.* S. C. *sub nom.* INLAND REVENUE COMRS. *v.* COKE, SAME *v.* WRIGHT, [1926] 2 K. B. 246.

663. ***Add. Annotations*:—Apld.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395; I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982. **Refd.** Whitmore *v.* I. R. Comrs. (1925), 10 Tax Cas. 645; Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550.

664. ***Add. Citations*:**—[1926] A. C. 395; 95 L. J. K. B. 487; 134 L. T. 681; 10 Tax Cas. 302, H. L.

***Add. Annotations*:—Folld.** Whitmore *v.* I. R. Comrs. (1925), 10 Tax Cas. 645. **Apld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982.

664a. —— —— —— ——.]—A limited co. appropriated for distribution among its ordinary shareholders as a capital bonus £200,000 undivided profits which had been carried to the credit of its reserve account, the amount to be applied (1) in subscribing for one hundred & fifty £1,000 4 per cent. debentures of the co., & (2) in paying up in full fifty thousand £1 unissued ordinary shares of the co. All the ordinary shares were held by one of the directors. The debentures, all of which were issued to this shareholder, were redeemable at one month's notice by the co. at any time, & at one month's notice by the holder after May 25, 1920. On Apr. 16, 1920, the whole of the £150,000 due on the debentures was paid by the co. to the holder, interest being waived by him, & the co. thereupon borrowed £72,500 from him at 6 per cent. interest, a liability reduced to £33,117 by June 30, 1920:—*Held*: the debentures constituted a capital receipt in the hands of the shareholder, & he was not assessable to super tax for the year 1920-21 in respect of the amount of the debentures.—WHITMORE *v.* INLAND REVENUE COMRS. (1925), 10 Tax Cas. 645.

665. ***Add. Annotations*:—Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395; I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982.

666. For the existing paragraph substitute the following paragraph:—

Distribution of profits—Assets of company written up—Loans to directors written off.]—A partnership business was converted into a limited co. in 1916, practically the whole of the shares therein being held by two respts., the original partners, who were brothers, & were also the governing directors. The accounts showed profits of £117,000 for the three years ending Dec. 1919, but no dividends were declared or paid. The co., having power to lend money, granted loans amounting to £283,000 to respts. at 5 per cent. interest, against which the capital assets were increased in value by £226,000 & profits drawn upon to the extent of £57,000. The actual cash lent was mainly provided by a bank overdraft. At a later date respts. duly passed resolutions purporting to cancel the debt of £283,000 by writing it off against the general reserve fund. Respts. having been assessed to super tax upon £283,000:—*Held*: (1) the loans were genuine loans, which gave rise to no liability to super tax, even if cancelled, except as to the £57,000 taken from profit & loss account; (2) the purported release of the debt was wholly invalid & ineffectual, & respts. remained liable to the co. to repay the whole amount of the £283,000 but were not liable for any super tax thereon.—HALL *v.* INLAND REVENUE COMRS. (1926), 135 L. T. 759, C. A.

668. ***Add. Citations*:**—95 L. J. K. B. 465; 42 T. L. R. 239; 70 Sol. Jo. 366; 10 Tax Cas. 235.

671a. Loans to controlling shareholder of private company—No dividends declared.]—Applt. was the controlling shareholder of five private limited cos. From time to time he withdrew from the business of each of the cos. sums which he used to finance the purchase in his own name of premises to be occupied by himself trading as a firm. The sums so withdrawn were described in the cos.' accounts as "loans" to applt. trading as such firm. Each of the cos. had power to advance money on loan, with or without security, but, while in some cases the loans shown in the accounts to have been made to applt. were subsequently approved formally in general meeting, no previous formal authorisation was given for any of the loans. The loans were not secured by any document, & no provision was made as to repayment or interest thereon. None of the cos. ever declared a dividend for any of the years material to the case. The Special Comrs. decided that the loans in question had not been made in the course of the businesses carried on by the cos., & that they were not genuine loans but constituted income of applt. for the purposes of super tax: *Held*: there was ample evidence before the Comrs. to support their conclusion of fact.—JACOBS *v.* INLAND REVENUE COMRS. (1925), 10 Tax Cas. 1.

672. ***Add. Citation*:**—134 L. T. 408.

673. ***Add. Citation*:**—135 L. T. 272.

674a. Annual value of family mansion occupied under will.]—*Held*: the occupant of a family mansion, under the terms of a will by which trustees were given general powers of management of the real estate & a discretion to admit to the mansion the present occupant or certain members of his family during his lifetime, must be regarded as being in occupation under the will, & the profits & gains representing the annual value of the house formed part of his income for purposes of super tax.—TOLLEMACHE *v.* INLAND REVENUE COMRS. (1926), 43 T. L. R. 58.

674b. Difference between net Schedule A. assessment & reduced rental paid under lease.]—Resp. negotiated for a lease of a house at a rent of £135 *per annum*, but it was eventually agreed that if resp. would pay £683, which was necessary to put the premises in a fit state for habitation, a lease would be granted at a rent of £35 *per annum*. The sum of £683 was paid before the execution of the

lease. The circumstances in which the rent was fixed at £35 *per annum* were not set out in the lease, which was for a term of seven years, shortly afterwards extended for another year in consideration of resp. contributing £141 towards further repairs, but it was agreed therein that the rent under any new lease should be £140 *per annum* :—*Held* : the sums paid by resp. for repairs at the beginning of his tenancy were capital expenditure, & the difference between the net Schedule A. assessment on the house & the rent of £35 actually paid under the lease formed part of his total income for super tax purposes.—INLAND REVENUE COMRS. *v.* FARGUS (1926), 10 Tax Cas. 665.

680. *Add. Annotation* :—**Reld.** Hartland *v.* Diggines, [1926] A. C. 289.

697. *Add. Annotation* :—**Reld.** Whitney *v.* I. R. Comrs., [1926] A. C. 37.

INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.

Part V.—Membership.

44. *Add. Annotation :—As to* (1) **Overd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc., [1927] A. C. 76.

45. *Add. Citation :—affd. sub nom.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY *v.* AGRICULTURAL WHOLESALE SOCIETY, [1927] A. C. 76; 95 L. J. Ch. 570; 42 T. L. R. 761; H. L.

Part VII.—Disputes.

57. *Add. Annotation :—As to* (2) **Reld.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc., [1927] A. C. 76.

PART VI. SECT. 2.

sf. *Power to borrow—Restricted by rules.*]—Where the rules of a society registered under Industrial & Provident Societies Act, 1908, which has no implied power to borrow money, authorise only borrowing by taking deposits or on bonds, borrowing by means of debentures is unauthorised & *ultra vires.*—SADLER *v.* AUCKLAND CO-OPERATIVE SOCIETY, LTD., [1926] N. Z. L. R. 84.—**N.Z.**

sk. ——— *Duty of lender.*]—A person proposing to lend money to a society registered under Industrial & Provident Societies Act, 1908, must satisfy himself as to its power to borrow, & must see that the loan which he is about to make is within the limits of that power.—SADLER *v.* AUCKLAND CO-OPERATIVE SOCIETY, LTD., [1926] N. Z. L. R. 84. **N.Z.**

INFANTS AND CHILDREN.

Part III.—Civil and Legal Capacity and Disabilities.

62. *Add. Annotation* :—**Reld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

Part V.—Contracts.

194. *Add. Annotation* :—**Reld.** Skipp *v.* Kelly (1926), 42 T. L. R. 258.

209. *Add. Annotation* :—**Reld.** Pontypridd Union Grdns. *v.* Drew (1926), 90 J. P. 169.

210. *Add. Annotation* :—**Consd.** Pontypridd Grdns. *v.* Drew (1926), 95 L. J. K. B. 1030.

347. *Add. Citations* :—95 L. J. Ch. 258; [1926] B. & C. R. 19.

Part VI.—Misrepresentation as to Age.

373. *Add. Annotations* :—**Reld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258. **Mentd.** *Re* Llanover S. E., [1926] Ch. 626.

Part VIII.—Property.

557. *Add. Annotation* :—**Reld.** The Fagernes, [1926] P. 185.

Part XI.—Care and Custody.

1156a. ——.]—The welfare of a child is the paramount consideration guiding the ct. in making an order as to its custody. But it is not the only consideration, & the next consideration is the right of a parent, particularly of a parent whose conduct has not been impeached, & effect will be given to a parent's right & desire for the custody of his child where the welfare of that child does not require a contrary decision.—*Re* THAIN, THAIN *v.* TAYLOR, [1926] Ch. 676; 95 L. J. Ch. 292; 135 L. T. 99; 70 Sol. Jo. 634, C. A.

PART V. SECT. 3.

k. *On appeal*, 28 Man. L. R. 229.

PART V. SECT. 4, SUB-SECT. 2.

b. *On appeal*, 15 O. L. R. 53.

PART VII. SECT. 1.

gl. ——.]—A father, who negligently left a shot gun & shells where they were accessible to his eleven-year-old son:—*Held*: liable in damages to infant pltf., who was injured by the discharge of the gun in the hands of the son. The fact that the mother of pltf. might have prevented the accident did not prevent recovery against the father & son by pltf.—BLACK *v.* HUNTER, [1925] 4 D. L. R. 235; [1925] 3 W. W. R. 393.—CAN.

PART X. SECT. 1, SUB-SECT. 2.—A.

ak. *Agreement by third party to maintain infant.*]—Where any person has expressly or impliedly undertaken to pay for the maintenance of a child, neither the child himself, nor, if he is dead, his estate is liable for such maintenance.—MCGUINNESS *v.* MCGUINNESS, [1925] N. Z. L. R. 456.—N.Z.

PART XI. SECT. 1.

am. *Jurisdiction of Supreme Court—Of Ontario—Child adopted by defendant under Adoption Act*, 1921—*Effect of order of county court judge.*]—CULLEN *v.* KEMP, [1925] 4 D. L. R. 579.—CAN.

PART XI. SECT. 4, SUB-SECT. 2.—A.

an i. ——.]—A father will not be deprived of the custody of his children, merely because his wife prefers to live away from him.—*Re* GRAY, [1925] 4 D. L. R. 381.—CAN.

PART XI. SECT. 4, SUB-SECT. 2.—G.

e. *Reved.*, [1925] 1 D. L. R. 761; [1925] 1 W. W. R. 378; 19 Sask. L. R. 247.

PART XI. SECT. 7, SUB-SECT. 2.—A.

1221 i. *Infant to be freed from improper restraint.*]—The writ of *habeas corpus* is the proper remedy of a mother who wishes to regain possession of her child illegally kept or detained from her.—STEVENSON *v.* FLORANT, [1925] 4 D. L. R. 530; [1925] S. C. R. 532; *affg.*, [1925] 3 D. L. R. 1189; Q. R. 38 K. B. 314.—CAN.

PART XI. SECT. 7, SUB-SECT. 2.—B. (e).

1230 l. *Nurse.*]—The parents of a child placed it in the care of a nurse employed at an hospital shortly after its birth. The parents then had no home of their own, & were in poor circumstances, the mother was blind, & the father's sight seriously impaired. When the child was about three years old, the parents had a home of their own, & though the child was well treated at the hospital the parents did not have free access to him, & were losing touch with him:—*Held*: the child should be handed over to the father.—*Re* ROONEY (1925), 19 Tas. L. R. 11.—AUS.

Part XIV.—Legal Proceedings.

1543. *Add. Annotation* :—**Mentd.** York Glass Co. *v.* Jubb (1925), 134 L. T. 36.

1563a. —— ——.]—PRACTICE NOTE, [1926] W. N. 8.

1695. *Add. Annotation* :—**Mentd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

1698. *Add. Annotation* :—**Mentd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

Part XVII.—Protection of Infants.

2196. *Add. Citation* :—28 Cox, C. C. 43.

PART XIV. SECT. 1, SUB-SECT. 10.—B. (d).

h. *Revsd.*, 4 A. R. 449.

st. *Applications as to property.*]—On applications respecting the property of infants costs must be kept down & the cheapest & most expeditious procedure adopted. Where there is a choice as to the manner of procedure & the more expensive procedure is taken, the solr. can recover only those costs which would have been allowed him had the cheaper procedure been followed.—ROYAL TRUST CO. *v.* BONSALL, [1925] 3 D. L. R. 141; [1925] 2 W. W. R. 103; 19 Sask. L. R. 513.—CAN.

PART XIV. SECT. 2, SUB-SECT. 7.—A.

g i. —— *Negligence of guardian ad litem.*] "Gross negligence," which may be interpreted as culpable of the interests of a minor defr., on the part of his guardian *ad litem* will entitle the minor to the avoidance of proceedings taken against him. The negligence must be such negligence as leads to the loss of a right which, if the suit had been defended with due must have been succ —BRIJ RAJ *v.* RAM I. L. R. 48 All. 41.—IND.

INJUNCTION.

Part II.—Jurisdiction.

28. *Add. Annotation :* **Mentd.** North Shipping Co. v. Rank (1926), 43 T. L. R. 82.
39. *Add. Annotation :* **Reld.** Hughes v. Satchell (1925), 134 L. T. 93.
40. *Add. Annotation :* **Reld.** Preston v. Raphael Tuck, [1926] Ch. 667.

Part III.—Interlocutory Injunctions.

177. *Add. Annotation :* **Folld.** Wall v. Exchange Investment Corpn., [1926] Ch. 143.

Part IV.—Perpetual Injunctions.

206. *Add. Annotation :* **Mentd.** Attwood v. Llay Main Collieries, [1926] Ch. 444

Part V.—Mandatory Injunctions.

267. *Add. Annotation :* **Mentd.** Cohen v. Roche (1926), 95 L. J. K. B. 945.

270. *Add. Annotation :*—*As to* (1) **Consd.** Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.

Part VI.—Injunction quia timet.

316. *Add. Annotation :* **Mentd.** Attwood v. Llay Main Collieries, [1926] Ch. 411.

Part VII.—Damages in lieu of or in addition to Injunction.

370. *Add. Annotation :* **Mentd.** Light v. West, [1926] 2 K. B. 238.

401. *Add. Annotation :* **Consd.** Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler, [1926] Ch. 609.

408. *Add. Annotation :* *As to* (1) **Reld.** Horte Estate v. Beattie (1926), 42 T. L. R. 701.

Part X.—Matters in respect of which Injunction may be Granted.

674. *Add. Annotation :* **Mentd.** Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108.

706. *Add. Annotations :* **Reld.** Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108; Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler, [1926] Ch. 609.

713. *Add. Annotation :*—**Reld.** Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108.

PART X. SECT. 2. SUB-SECT. 3.—A. , ninety-five per cent. of his fruit . of for harvesting or picking but not than a certain date in on to market the fruit grown by of the co. was not one in it was provided that should deliver to the respect of which the ct. should at the instance of the co. grant an injunction. —PAKENHAM UPPER FRUIT CO., LTD. v. CROSBY, [1925] V. L. R. 27; 35 C. L. R. 386; 31 Argus L. R. 13.—AUS.

716. *Add. Annotation :*—**Folld.** Rely-A-Bell lar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609.

720. *Add. Annotation :*—**Apprvd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co., [1926] A. C. 108.

724. *Add. Citations :*—95 L. J. P. C. 71; 134 L. T. 227; 31 Com. Cas. 80; 16 Asp. M. L. C. 585.

750. *Add. Annotation :* **Consd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 512.

Part XI.—Procedure.

1216. *Add. Annotation :*—**Reld.** Horton's Estate *v.* Beattie 926), 42 T. L. R. 701

PART XI. SECT. 1, SUB-SECT. 1. A.

b. *Revsd.*, 2 A. R. 226.

PART XI. SECT. 2, SUB-SECT. 2.

sp. *Plaintiff—Having only equitable interest.*]—Injunction granted. BESSNETT *v.* WHITE, [1926] 1 D. L. R. 95; 1925] 3 D. L. R. 560; 57 O. L. R. 171.—**CAN.**

st. *Having mere termini.*] Pltf. having a mere *termini* is not necessarily debarred from maintaining an action for injunction. MIDNAPUR ZAMINDARI & CO., LTD. *v.* RAM KANAI SINGH, DEO DARPA SAHA (1925), I. L. R. 5 Pat. 80. **IND.**

PART XI. SECT. 2, SUB-SECT. 7.

1083 i. *The application Necessarily disclosure of facts.*] Y *v.* YARMIE, [1925] 2 D. L. R. 1215. **CAN.**

PART XIV. SECT. 5.

rome

In an action in the Supreme Ct. of for an injunction restraining deft. from carrying on or being con- in any business similar to of s. in be had be as to amount, the judge granted the injunction sought, but awarded no damages. He directed that pltfs.' costs should be paid by deft., but did not give any special direction as to the scale of costs: *Held:* pltfs. were entitled to costs on the Supreme Ct. ION LOOSE LEAF CO. *v.* 25] 3 D. L. R. 126; 57 O. L. R. 81. **CAN.**

INNS AND INNKEEPERS.

See infra.

PART III. SECT. 2, SUB-SECT. 2.—A. (a).

245 i. *[Goods brought to inn by guest—Although value of goods greatly in excess of amount owing.]*—NEWMAN v. WHITEHEAD (1909), 9 W. L. R. 688; 2 Sask. L. R. 11.—CAN.

INSURANCE.

Part I.—General Principles.

3. *Add. Annotation :*—*As to* (2) **Reld.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

13. *Add. Annotation :*—**Reld.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

18a. **Type calculated to elude observation—Insurers refused benefit of clause.**]—Deft. co. insured a quantity of leather, consigned c.i.f., for a voyage from New York to Tunis, by a certificate of insurance which provided : "This certificate represents & takes the place of the policy & conveys all the rights of the original policy-holder as fully as if the property were covered by a special policy direct to the holder of this certificate." One of the conditions of the policy was in much smaller print than other parts of the policy & was as follows : "In case of loss or damage to the property hereby insured the loss shall be reported to the representatives of the co., or, if there be no representative of the co., to Lloyd's agent, as soon as the goods are landed or the loss is known or expected." On the day after the arrival of the goods at Tunis the consignee sold them to pltf., who found them to have been damaged by salt water. In an action by pltf. on the certificate of insurance deft. co. contended, (1) that pltf. was not the right person to sue, & (2) that the clause in the policy as to giving notice within a limited time had not been complied with :- *Held :* the certificate, having been issued by deft. co. itself, enured to the benefit of pltf., & since pltf. did not know of the condition as to notice, & since the clause as to notice was in such small print that it was not such as a reasonable man, reading with reasonable care, would regard as forming part of the contractual terms, pltf. was entitled to recover. - KOSKAS *v.* STANDARD MARINE INSURANCE Co., LTD. (1926), 42 T. L. R. 692.

26. *Annotation :* - **Reld.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

63. *Add. Citation :* - 31 Com. Cas. 10.
Add. Annotation **Mentd.** Mulji Cheong Yue S.S. Co., [1926] A. 497.

93. *Add. Annotation :* **Mentd.** Hirji Mulji Cheong Yue S.S. Co., [1926] A. C. 497.

Part II.—Marine Insurance.

233. *Add. Annotation :*— **Distd.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692.

236. *Add. Annotation :*—**Reld.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692.

248. *Add. Annotation :*—**Reld.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281.

505a. **Pontoon with crane fixed thereon.**]—*Held :* not a "ship or vessel" within the rules of an indemnity assocn., on the ground that the quality of adaptability for navigation was not sufficiently present to bring it within the meaning of those words in the rules.—MERCHANTS' MARINE INSURANCE Co., LTD. *v.* NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCN. (1926), 43 T. L. R. 107, C. A.

630. *Add. Annotation :*—**Mentd.** The St. George, [1926] P. 217.

666. *Add. Annotation :*—*Generally*, **Reld.** Banco de Barcelona *v.* Union Marine Insce. (1925), 134 L. T. 350.

718. *Add. Annotation :*—**Reld.** Excess Insce. *v.* (1925), 31 Com. Cas. 43.

719. *Add. Annotation :* **Reld.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43.

731. *Add. Annotation :* - *Generally*, **Reld.** Insce. *v.* Mathews (1925), 31 Com. Cas.

782. *Add. Annotation :*- **Reld.** Lake *v.* (1926), 95 L. J. K. B. 586.

985. *Add. Annotation :* - **Mentd.** Rio Tinto Co. *v.* Shipping Co. (1926), 134 L. T. 764.

1099. . *Annotation :* - **Mentd.** Rio Tinto Co. *v.* Shipping Co. (1926), 134 L. T. 764.

1206. . *Annotation :*—**Consd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

1252. *Add. Annotation :* **Consd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

1265a. ——.]—In an action on a policy of marine insurance on a cargo of celluloid shipped from America to France, defts. pleaded that assured had wrongfully concealed certain facts material to be disclosed to them. The cargo had in fact been previously carried, partly on deck, in a protracted voyage from New York to Halifax, where, the vessel

PART I. SECT. 3, SUB-SECT.

m i. *Duty of insurer.*]—It is the of insurance cos. to make the issued by them accord with & not depart from the terms of their form, & to express both in clear & unambiguous —BRAUND *v.* LIFE & CITIZENS ASSURANCE Co., [1926] N. Z. L. R. 529.—N.Z.

PART I. SECT. 3, SUB-SECT. 2.—S. g. Read now "18a i."

PART I. SECT. 14, SUB-SECT. 5.

200 xix. —— ——.]—To a claim by pltfs., carrying on partner ship, for the value of with defts. & destroyed by fire, defts. pleaded that it was a condition of the proposal for insurance that the tobacco should be the property of the firm only, whereas a portion was in

three of the members jointly. In their replication pltfs. alleged that defts.' agents had knowledge of the above fact at the time the the

that defts. were from ty under policy : in law & no cause of be & Co.

unable to proceed further, it was unloaded & part put in a warehouse, & the rest left on the open quay, exposed to severe weather, for over two months:—*Held:* these facts were material to be disclosed to the underwriters, & as they were not disclosed, & there was no waiver of non-disclosure, the policy was vitiated.—GREENHILL *v.* FEDERAL INSURANCE Co., [1927] 1 K. B. 65; 95 L. J. K. B. 717; 135 L. T. 244; 70 Sol. Jo. 565; 31 Com. Cas. 289; 17 Asp. M. L. C. 62, C. A.

1557. *Add. Annotation:*—**Consd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

1589. *Add. Annotation:*—*As to* (2) **Dbtd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

1641. *Add. Annotations:*—**Reld.** Banco de Barcelona *v.* Union Marine Insce. (1925), 134 L. T. 350. **Mentd.** Falcon *v.* Famous Players Film Co., [1926] 1 K. B. 393.

1650. *Add. Annotation:*—**Reld.** Mancomunidad del Vapor Frumiz *v.* Royal Exchange Assce. (1926), 43 T. L. R. 103.

1684. *Add. Annotation:*—**Reld.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1701. *Add. Citations:*—31 Com. Cas. 145; 16 Asp. M. L. C. 579.

1708a. **"Collision with any object"—Bumping on rocks.**]—A policy of marine insurance on the hull & machinery of a steamer covered the ordinary perils of the sea & contained the following clause: "Subject to the Institute 'Free of Particular Average absolutely' time clauses as annexed, but this insurance to include damage received by collision with any object (ice included) other than water." The ship, having stranded, bumped on the rocks & damaged her bottom plates:—*Held:* the contact with the rocks was a "collision with an object" within the policy.—MANCOMUNIDAD DEL VAPOR FRUMIZ *v.* ROYAL EXCHANGE ASSURANCE (1026), 43 T. L. R. 103.

1709. *Add. Annotation:*—**Reld.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1710. *Add. Annotation:*—**Reld.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1736. *Add. Annotation:*—**Reld.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1809. *Add. Citations:*—134 L. T. 350; 16 Asp. M. L. C. 604.

1846. *Add. Annotation:*—*Generally*, **Mentd.** Falcon *v.* Famous Players Film Co., [1926] 1 K. B. 393.

1850. *Add. Annotations:*—*Generally*, **Reld.** Adelaide S.S. Co. *v.* R. (1925), 95 L. J. K. B. 213; Cayzer, Irvine *v.* Board of Trade (1926), 42 T. L. R. 731.

1854. *Add. Annotation:*—**Reld.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1858. *Add. Annotation:*—**Reld.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1860. *Add. Annotation:*—**Reld.** Cayzer, Irvine *v.* Board of Trade (1926), 42 T. L. R. 731.

1981. *Add. Annotation:*—**Apld.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637.

1982. *Add. Annotation:*—**Reld.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637.

2087. *Add. Annotation:*—**Mentd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

2189. *Add. Annotation:*—**Reld.** Australia (Owners) *v.* Nautilus (Owners) (1926), 95 L. J. P. 145.

2259. *Add. Annotation:*—**Mentd.** The Massillia, [1926] P. 180.

2339. *Add. Annotations:*—**Reld.** Sheppy Glue & Chemical Works *v.* Medway River Conservators (1926), 24 L. G. R. 457. **Mentd.** The Mostyn (1926), 135 L. T. 693.

2340. *Add. Annotations:*—**Reld.** Whitney *v.* I. R. Comrs., [1926] A. C. 37. **Mentd.** Sheppy Glue & Chemical Works *v.* Medway River Conservators (1926), 24 L. G. R. 457.

2469. *Add. Annotation:*—*Generally*, **Mentd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

Part III.—Fire Insurance.

2568. *Add. Annotation:*—*As to* (2) **Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B.

2572. *Add. Citation:*—31 Com. Cas. 10.
Add. Annotation:—**Mentd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

2644. *Add. Annotation:*—*Generally*, **Mentd.** Pallin *v.* Northern Employers' Mutual Indemnity Co. (1925), 95 L. J. K. B. 25.

2718. *Add. Annotation:*—**Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

2740. *Add. Annotation:*—*Generally*, **Reld.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

Part IV.—Life Insurance.

2936. *Add. Annotation:*—**Mentd.** Fisher *v.* (1926), 90 J. P. 195.

Add. Citations:—95 L. J. Ch. 434; 135 L. T. 558; 42 T. L. R. 504, C. A.

Add. Annotation:—**Mentd.** *Re* *Ex p.* Salaman, [1926] Ch. 167.

Add. Citations:—95 L. J. Ch. 195; 135 L. T. 374.

3104. *Add. Citation:*—134 L. T. 557.

3128. *Add. Annotation:*—**Reld.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

Part V.—Accident Insurance: Insurance against Liability for Accidents to Third Persons.

3148. *Add. Annotation :—Generally,* **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

3155. *Add. Annotation :*—**Refd.** Rowett, Leaky *v.* Scottish Provident Institution (1926), 95 L. J. Ch. 434.

3176. *Add. Annotation :*—**Refd.** Rowett, Leaky *v.* Scottish Provident Institution (1926), 95 L. J. Ch. 434.

3200. *Add. Annotation :*—**Refd.** Koskas *v.* Standard Marine Insco. (1926), 42 T. L. R. 692.

3210. *Add. Citation :*—95 L. J. K. B. 25.

3217a. —— —— Actual driver also insured—Ratable contribution.]—G. took out with the M. co. a motor car insurance policy covering himself & any friend driving with G.'s consent, & providing as following: "Condition 6. The extension of the indemnity to friends or relatives of the insured is conditional upon such friend or relative being a licensed & competent driver & not being insured under any other policy. Condition 10. If at the happening of any accident, injury, damage, or loss covered by this policy there shall be subsisting any other insurance or indemnity of any nature whatever covering same, whether effected by insured or by any other person, then the co. shall not be liable to pay or contribute towards any such damage or loss more than a ratable proportion of any sum payable in respect thereof for compensation." L., G.'s brother-in-law, took out with the G. co. a similar policy, providing that "insured will also be indemnified hereunder while personally driving a car not belonging to him provided that there is no other insurance in respect of such other car whereby insured may be indemnified," & that "if at the time of the occurrence of any accident, loss or damage there shall be any other indemnity or insurance subsisting whether effected by insured or by any other person the corpn. shall not be liable to pay or contribute more than a ratable proportion of any sums payable in respect of such accident loss or damage." While L. was driving G.'s car with G.'s consent it had a collision, & L. had to pay damages. G., as trustee for L., claimed against the M. co., & L. on his own behalf claimed against the G. co.:—*Held:* in each policy the provision as to ratable contribution qualified the preceding clause, & each co. was liable to pay claimants half the amount claimed.—GALE *v.* MOTOR UNION INSURANCE CO., LTD., LOYST *v.* GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPN., LTD. (1926), 43 T. L. R. 15; 70 Sol. Jo. 1140.

Part VII.—Insurance against Burglary and Theft.

3252. *Add. Citations :—affd.,* [1927] A. C. 140; 136 L. T. 263; 43 T. L. R. 46; 70 Sol. Jo. 1111, H. L.

3256. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

3257. *Add. Annotation :—Generally,* **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

3258. *Add Citations :—revsd.,* [1926] 2 K. B. 51; 95 L. J. K. B. 586; 135 L. T. 129; 42 T. L. R. 425; 70 Sol. Jo. 584; 31 Com. Cas. 271, C. A.; *revsd.* (1927), 163 L. T. Jo. 319, H. L.

3260a. "Dishonesty"—Discounting bills of exchange subsequently dishonoured.]—Pltf. was insured by two policies, subscribed by deft., against loss or deprivation of bills of exchange through theft & any other loss [theft or other] During the currency of the policies pltf. was induced by false representations to discount certain bills of exchange. The bills were dishonoured, & pltf. brought an action on the policies on the ground that he had suffered a loss through having dealt in the bills. Deft. contended that the above provision in the policies only covered accidental loss of documents or physical deprivation of the possession of documents:—*Held:* pltf.'s loss was caused by dishonesty within the policy.—WASSERMAN *v.* BLACKBURN (1926), 43 T. L. R. 97.

3269. *Add. Annotation :*—**Refd.** Lake *v.* (1926), 95 L. J. K. B. 586.

Part VIII.—Other Kinds of Insurance.

3282. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B.

3289. *Add. Citation :*—95 L. J. Ch. 24.

Part XI.—Mutual Insurance Associations.

3366. *Add. Annotation :*—**Mentd.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689.

3367. *Add. Annotation :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281.

3368. *Add. Annotations :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281; Greenberg *v.* Cooperstein, [1926] Ch. 657. **Mentd.** Thomas *v.* Evans, I. R. Comrs. *v.* South-West Lancashire Coal-Owners (1926), 135 L. T. 678.

INTERPLEADER.

See infra.

PART II. SECT. 8, SUB-SECT. 4.
e. *On appeal*, **11 P. R. 296.**

PART II. SECT. 8, SUB-SECT. 7.
d (p. 491) **l.** *On appeal*, **11 P. R. 296.**

INTOXICATING LIQUORS.

Part IV.—Grant of Licenses.

149. *Add. Annotation* :—**Apld.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

206. *Add. Annotation* :—**Refd.** Short v. Poole Corpn., [1926] Ch. 66.

234. *Add. Annotation* :—**Refd.** R. v. Holborn Licensing JJ., *Ex p.* Stratford Catering Co. (1926), 90 J. P. 159.

299. *Add. Annotation* :—**Apld.** R. v. Holborn Licensing JJ., *Ex p.* Stratford Catering Co. (1926), 90 J. P. 159.

299a. —— —— **Security of tenure.**]—On an application for the transfer of a license the licensing justices may consider the security of tenure given to the proposed licensee as a matter affecting his "fitness or propriety." They may also adopt a certain standard length of notice as generally desirable, & if they do so, it is convenient that they should make it publicly known, provided that it is not made a hard & fast rule to be applied indiscriminately.—R. v. HOLBORN LICENSING JJ., *Ex p.* STRATFORD CATERING CO., LTD. (1926), 90 J. P. 159; 42 T. L. R. 778; 24 L. G. R. 509, D. C.

Part VII.—Compensation.

381. For the existing paragraph substitute the following paragraph:—

. . . . . **Instructing solicitor to oppose.**]—On an application to the licensing justices of a county borough for the renewal of an old on-licence the justices referred the matter to the compensation authority of the borough under Licensing (Consolidation) Act, 1910 (c. 24), s. 19, & at a further meeting they resolved that a solr. should be instructed to appear before the compensation authority & oppose the renewal on their behalf. The solr. duly appeared & opposed, & the compensation authority refused the renewal, subject to payment of compensation. Three of the justices who sat & voted as members of the compensation authority had been parties to the resolution of the licensing justices authorising a solicitor to appear on their behalf: *Held*: the three justices were disqualified from sitting on the compensation tribunal on the ground of bias, & the decision of the tribunal must be set aside. FROME UNITED BREWERIES CO. v. BATH JJ., [1926] A. C. 586; 95 L. J. K. B. 730; 135 L. T. 482; 90 J. P. 121; 42 T. L. R. 571; 24 L. G. R. 261, H. L.; *revsg.* S. C. *sub nom.* R. v. BATH COMPENSATION AUTHORITY, [1925] 1 K. B. 685, C. A.

Part IX.—Hours of Sale.

575a. *Add. Citations*:—[1926] 2 K. B. 519; 90 J. P. 155; 24 L. G. R. 171.

Part XII.—Offences.

750. *Add. Annotation*: **Consd.** Evans v. Fletcher (1926), 135 L. T. 153.

751. *Add. Annotation*:—**Refd.** Evans v. Fletcher (1926), 135 L. T. 153.

752. *Add. Annotation*:—**Folld.** Evans v. Fletcher (1926), 135 L. T. 153.

755a. —— —— **During non-permitted hours.**]—Resp., the licensee of a public-house, was found drunk in the kitchen of the premises at 10.30 p.m. during non-permitted hours, the front door being wide open at the time, & he was summoned for being found drunk on licensed premises under Licensing Act, 1872 (c. 94), s. 12. The justices dismissed the summons on the ground that the time at which resp. was found drunk was after the hours when the sale of intoxicating liquor was permitted:—*Held*: since at the time in question the premises were open & there was nothing to prevent the sale of food & non-intoxicating liquor at that time, the justices ought to have convicted resp.—EVANS v. FLETCHER (1926), 135 L. T. 153; 90 J. P. 157; 42 T. L. R. 507; 24 L. G. R. 424; 28 Cox, C. C. 231, D. C.

757. *Add. Annotation*:—*Generally*, **Refd.** Evans v. Fletcher (1926), 135 L. T. 153.

PART XII. SECT. 3, SUB-SECT. 1.

sk. *Aiding persons to commit offence of being found unlawfully on premises after closing hours.*]—Where persons are found unlawfully on licensed premises after closing hours, even though the licensee was not a consenting party to their original entry, & after their entry pressed them to depart, but showed looseness & lack of control not desirable in a licensee, & did not turn such persons out of the premises, the licensee is guilty of aiding & assisting such persons to commit the offence of being found unlawfully on licensed premises after closing hours.—ARMSTRONG v. KELLEHER, [1925] N. Z. L. R. 422.—N.Z.

PART XII. SECT. 11.

d (p. 109) **l.** —— —— *Form of.*] A conviction for an offence against the above Act omitted the provision in respect to the issuing of a warrant of distress, & the imposition of imprisonment in default:—*Held*: the conviction was bad.—R. v. MCFARLANE (1891), 24 N. S. R. (12 R. & G.) 51.—CAN.

JUDGMENTS AND ORDERS.

Part II.—Classification.

101. *Add. Annotation* :—**Mentd.** The Modica, [1926] P. 72.

158. *Add. Annotation* :—**Reld.** The Lord Strathcona (No. 2), [1926] P. 18.

184. *Add. Annotation* :—*Generally*, **Mentd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

185. *Add. Annotation* :—**Reld.** Whitney *v.* I. R. Comrs., [1926] A. C. 37.

190. *Add. Annotation* :—**Mentd.** Fennell *v.* East Ham Corpn., [1926] Ch. 641.

199. *Annotations* :—Delete Anderson *v.* Equitable Life Assce. Soc. of the United States (1925), 42 T. L. R. 123.

Add. Annotation :—**Mentd.** Public Trustee *v.* Elder, [1926] Ch. 776.

217. *Add. Annotations* :—**Mentd.** Jones *v.* Harris (1926), 43 T. L. R. 1; Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

222. *Add. Annotation* :—**Mentd.** Sheppy Glue & Chemical Works *v.* Medway River Conservators (1926), 24 L. G. R. 457.

230. *Add. Annotation* :—**Consd.** Everett *v.* Ryder (1926), 135 L. T. 302.

231. *Add. Annotation* :—**Reld.** Groebel *v.* Hungarian Property Administrator (1925), 70 Sol. Jo. 345.

239. *Add. Annotation* :—**Reld.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

Part IX.—Effect of Judgments and Orders.

282. *Add. Citation* :—[1925] B. & C. R. 265.

320. *Add. Annotation* :—**Reld.** Knight *v.* Knight (1925), 95 L. J. Ch. 33.

Part XVI.—Interest on Judgments and Orders.

403. *Add. Annotation* :—**Mentd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395.

430. *Add. Citation* :—16 Asp. M. L. C. 524.

Part XVII.—Judicial Decisions as Authorities.

504. *Add. Annotation* :—*Generally*, **Mentd.** G. W. K. *v.* Dunlop Rubber Co. (1926), 42 T. L. R. 376.

506. *Add. Annotation* :—**Reld.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692.

521. *Add. Annotation* :—**Mentd.** Mergenthaler Linotype Co. *v.* Intertype Co. (1926), 42 T. L. R. 682.

525a. ——.]—In doubtful cases the cts. attach some importance to the fact that a decision has stood unchallenged for a considerable time, but neither the House of Lords nor the Ct. of Appeal has shown the slightest compunction in overruling cases of much higher authority than the decision in this case [*Birkenhead Guardians* v. *Brookes* (1906), 95 L. T. 359, decided by RIDLEY & DARLING, JJ.] if, when the matter is presented to them for consideration, they are of opinion that the decisions are wrong (SCRUTTON, L.J.).—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

531. *Add. Annotation* :—**Mentd.** Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

542. *Add. Annotation* :—**Reld.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

551. *Add. Citations* :—[1926] A. C. 545; 31 Com. Cas. 357; 17 Asp. M. L. C. 40.
Add. Annotation :—**Mentd.** Hogarth *v.* Cory (1926), 95 L. J. P. C. 204.

559a. **Affecting revenue.**]—Tax cases ought not to be unsettled (LORD SUMNER).—SMITH (JOHN) & SON *v.* MOORE, [1921] 2 A. C. 13; 90 L. J. P. C. 149; 125 L. T. 481; 37 T. L. R. 613; 65 Sol. Jo. 492, H. L.

Annotations :—**Folld.** Elliott *v.* Duchess Mill (1926), 95 L. J. K. B. 963. **Mentd.** Wankie Colliery Co. *v.* I. R. Comrs., [1922] 2 A. C. 51; Bosse Spinning Co. *v.* I. R. Comrs. (1926), 135 L. T. 211; British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; I. R. Comrs. *v.* Newcastle Breweries (1926), 95 L. J. K. B. 936.

PART II. SECT. 3, SUB-SECT. 5.

ea. *Declaratory Judgments Act*, 1908 — *Discretion of court—Anticipatory construction.*]—The jurisdiction of the ct. to give or make a declaratory judgment or order under sect. 3 of the above Act is discretionary, & the ct. will not give or make such judgment or order by way of anticipatory interpretation or construction of statutory powers in the abstract, without knowledge of the facts & circumstances under which such powers might be exercised, or without any certitude that many of the powers will ever be exercised. Neither will the ct. exercise its discretion to give or make any judgment or order on a question of construction which, whichever way it is decided, does not necessarily put an end to the litigation.—DAIRY PROPRIETARY ASSOCN. (INC.) *v.* NEW ZEALAND DAIRY PRODUCE CONTROL BOARD, [1926] N. Z. L. R. 535.—N.Z.

eb. —— *Whether binding on Crown.*]—The Crown is not bound by the above Act, in a case where the question raised involves a decision affecting a monetary claim against the Crown.—MCDOUGALL *v.* A.-G., [1925] N. Z. L. R. 104.—N.Z.

569a. —— ——.] — Where a broad principle has been decided by the House of Lords it is very undesirable that it should be frittered away by fine distinctions (LORD CAVE, C.).—NEWTON *v.* GUEST, KEEN & NETTLEFOLDS, LTD. (1926), 135 L. T. 386; 70 Sol. Jo. 689; 19 B. W. C. C. 119, H. L.

Annotation:—**Mentd.** Howells *v.* Powell Duffryn Steam Coal Co., [1926] 1 K. B. 472.

577. *Add. Annotation*:—**Mentd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205.

597. *Add. Annotations*:—**Consd.** Barton-upon-Irwell Union *v* Wycombe Union, [1926] 2 K. B. 3. **Reld.** Wycombe Grdns. *v.* Barton-upon-Irwell Grdns. (1926), 43 T. L. R. 89.

599. *Add. Annotation*:—**Mentd.** Sheppy Glue & Chemical Works *v.* Medway River Conservators (1926), 24 L. G. R. 457.

603. *Add. Annotation*:—**Mentd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

604. *Add. Annotation*:—**Reld.** Venn *v.* Tedesco, [1926] 2 K. B. 227.

605. *Add. Annotation*:—**Consd.** Venn *v.* Tedesco, [1926] 2 K. B. 227.

608. *Add. Citations*:—95 L. J. K. B. 866; 90 J. P. 185; 42 T. L. R. 478; 24 L. G. R. 496.

609. *Add. Annotation*:—**Reld.** Venn *v.* Tedesco, [1926] 2 K. B. 227.

611. *Add. Annotation*:—**Mentd.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692.

626. *Add. Annotation*:—**Mentd.** Venn *v.* Tedesco, [1926] 2 K. B. 227.

643. *Add. Annotation*:—**Mentd.** United Billposting Co. *v.* Somerset County Council (1926), 95 L. J. K. B. 899.

705. *Add. Annotations*:—**Mentd.** Chesterman *v.* Federal Taxation Comr., [1926] A. C. 128; Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550.

714. *Add. Citations*:—95 L. J. K. B. 936; 135 L. T. 618; 42 T. L. R. 609; 70 Sol. Jo. 734, C. A.

717. *Add. Annotation*:—*Generally*, **Mentd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

736. *Add. Annotation*:—**Mentd.** Wycombe Grdns. *v.* Barton-upon-Irwell Grdns. (1926), 43 T. L. R. 89.

739a. Discrepancy between reports.] — Where a case was reported in 1893 both in the *Law Reports* & in the *Law Times*, & the reports differed both in the narrative of facts & in the words of the judgments, LORD BUCKMASTER assumed that in the *Law Reports* there was a revision by the judges of the judgments that they delivered & accepted that as an authoritative statement.—FAIRMAN *v.* PERPETUAL INVESTMENT BUILDING SOCIETY, [1923] A. C. 74; 92 L. J. K. B. 50; 128 L. T. 386; 87 J. P. 21; 39 T. L. R. 54, H. L.

Annotations:—**Mentd.** Cockburn *v.* Smith, [1924] 2 K. B. 119; Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746.

782. *Add. Annotation*:—**Mentd.** Hall *v.* Pim (1926), 32 Com. Cas. 46.

JURIES.

See infra.

PART VII. SECT. 5, SUB-SECT. 3.—C. (b) i.
183 l. *Revsd.*, 34 S. C. R. 228.

LAND TAX.

116. *Add. Annotation* :—**Refd.** Parr *v* A.-G., [1926] A. C. 239.

LANDLORD AND TENANT.

Part I.—Relation of Landlord and Tenant.

20. *Add. Annotation :*—**Mentd.** Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

243. *Add. Annotation :*—**Mentd.** Anderson *v.* Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557.

Part II.—Agreements for Lease.

296. *Add. Annotation :*—**Mentd.** Newman *v.* Slade, [1926] 2 K. B. 328.

362. *Add. Annotation :*—*As to* (1) **Reld.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

374. *Add. Annotation :*—**Mentd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

499. *Add. Annotation :*—**Reld.** Rye *v.* Purcell, [1926] 1 K. B. 446.

501. *Add. Annotation :*—**Reld.** Rye *v.* Purcell, [1926] 1 K. B. 446.

834. *Add. Annotation :*—**Reld.** York Glass Co. *v.* Jubb (1925), 134 L. T. 36.

Part III.—Leases.

1355. *Add. Annotation :*—**Reld.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

Part IV.—Underleases.

1469. *Add. Annotation :*—**Reld.** Melzak *v* Lilienfeld, [1926] Ch. 480.

1470. *Add. Annotation :*—*As to* (2) **Reld.** Melzak *v.* Lilienfeld, [1926] Ch. 480.

1514. *Add. Citations :*—95 L. J. Ch. 305 ; 135 L. T. 145.

Part VI.—Licence.

1598. *Add. Annotations :*—**Mentd.** *Re* Wait, [1926] Ch. 962 ; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298.

1650. *Add. Annotation :*—**Reld.** Chaplin *v.* Smith, [1926] 1 K. B. 198.

Part VII.—Premises Included in the Demise.

1810a. —— **Liberty of passage for pipes—Extent of right.**]—Deft. co. were the lessees from a firm of architects for a determinable term of twenty-one years from June 24, 1923, & also occupiers of the first floor of a block of buildings known as I. Court under a lease which contained a reservation "excepting & reserving unto the lessors & the person or persons for the time being occupying the other parts of the building the passage of gas water & other pipes & electric wires through the demised premises & the free running of water & soil in & through the pipes connected with the demised premises." In May, 1924, pltf. took a lease of the second floor of I. Court from the firm, subject to a similar reservation. In exercise of the right reserved to the lessors & persons occupying other parts of the premises pltf. conducted pipes from her premises through deft. co.'s part of the premises. Deft. co., after the operations had proceeded for some time, alleged that great inconvenience would be caused to them, & cut the pipes :—*Held :* the reservation gave no right to the lessors or pltf. to introduce any new pipes or wires into the premises.—TAYLOR *v.* BRITISH LEGAL LIFE ASSURANCE CO. (1925), 94 L. J. Ch. 284 ; 133 L. T. 453 ; 23 L. G. R. 585, C. A.

PART III. SECT. 6. , LTD. *v.* N. 144.—IR. PART VI. SECT. 2, SUB-SECT. not a but a to use the U. K. ADVERTISING CO. *v.* WASH LAUNDRY, [1926] S. C. SCOT.

Part VIII.—Nature, Creation, and Duration of Tenancies.

1848. *Add. Annotation :—As to* (2) **Reld.** Lowther *v.* Clifford, [1927] 1 K. B. 130

l. Anchor

v. Purcell,

2090. *Add. Annotation :*—**Reld.** Rye *v.* Purcell, [1926] 1 K. B. 446.

2097. *Add. Citations :*—[1927] 1 K. B. 130; 90 J. P. 113; 24 L. G. R. 231.

2101. *Add. Annotation :*—**Reld.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

Part IX.—Renewal of Tenancies.

2182. *Add. Annotation :*—**Mentd.** Public Trustee *v.* **Elder,** [1926] Ch. 776.

2243. Before this case, for "*See, now,* Law of Property Act, 1925 (c. 20), s. 145," read "*See, now,* Law of Property Act, 1922 (c. 16), s. 145."

Part X.—Particular Properties.

2375. *Add. Annotation :*—**Apld.** Noble *v.* Harrison, [1926] 2 K. B. 332.

2390. *Add. Annotation :*—**Reld.** Booth *v.* Thomas (1926), 95 L. J. Ch. 160.

2433. *Add. Citation :* 134 L. T. 319.

Part XI.—Covenants.

2641. *An* *As to* (2) **Folld.** Booth *v.* Thomas, [1926] Ch. 3[illegible].

2651. *Add. Annotation :—As to* (1) **Consd.** Booth *v.* Thomas, [1926] Ch. 397.

2697. *Add. Annotations :—As to* (2) **Apld.** Booth *v.* Thomas, [1926] Ch. 397. *As to* (3) **Reld.** Booth *v.* Thomas, [1926] Ch. 397.

Annotation :—**Apld.** Booth *v.* Thomas, Ch. 397.

2760. *Add.* :—**Reld.** Stoney *v.* East bourne R. D. C. [illegible]25), 90 J. P. 133.

2776. After this case add "*See, now,* Law of Property Act, 1925 (c. 20), s. 79."

2783. After this case add "*See, now,* of Property Act, 1925 (c. 20), s. 79."

Part XII.—Restrictions on Use of Premises.

2872. *Add. Annotation :*—**Consd.** Melzak *v.* Lilienfeld, [1926] Ch. 480.

2909. *Add. Citations :*—95 L. J. Ch. 52; 135

2922. *Add. Annotation :*—**Reld.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689.

2929. *Add. Annotation :*—**Reld.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689.

2994. *Add. Citations :*—95 L. J. Ch. 1; 134 L. T. 50.

3033. *Add. Annotation :*—**Reld.** Richardson *v.* (1926), 43 T. L. R. 5[illegible]

3067. *Citations :*—[1926] Ch. 620; 95 J. Ch. 445; 135 L. T. 107.

PART IX. SECT. 2, SUB-SECT. 2.

a l. ——.]—Where a renewal clause in a lease confers on the lessee the to obtain from the lessor on the e of the old term, but not until the grant of a new lease *in pre* in continuation of the old, the cannot, during the currency of the lease, [illegible] grant a new lease, compel the [illegible] accept it, even though the latter may notice of his intention to right of renewal.— N. Z. 178.—N.Z.

PART IX. SECT. 2, SUB-SECT. 5.

i. —— *Not after transfer of to*

ROY *v.* ANNADA CHAUDHURY (1926), I. L. R. 5[illegible]

PART X. SECT. 2, SUB-SECT. 3.—A.

ek. *Land leased in lots by reference to plan—Lessor not entitled to depart from plan.*]—BURNS *v.* DILWORTH TRUST BOARD, N. Z. L. R. N.Z.

PART X. SECT. 5, SUB-SECT. 4.

2395 iv. v. KILSON, [illegible] N. Z. . R. 123.—N.Z.

PART X. SECT. 7, SUB-SECT. 3 B.

on—

of or of t. for [illegible] v. DAY, N. 80.—IR.

PART XII. SECT. 3, SUB-SECT. 4 B.

e l. *for use as* a breach of c of [illegible] was entitled to an restraining such breach.— v. WOOLWICH, [1925] App S. AF.

Part XIII.—Fitness of Premises.

3159. *Add. Annotation :*—**Reld.** Fisher *v.* Walters (1926), 90 J. P. 195.

3160. *Add. Citations :*—90 J. P. 195 ; 24 L. G. R. 327.

Part XIV.—Fixtures.

3189. *Add. Annotation :*—*Generally*, **Mentd.** Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298.

3390. *Add. Citation :* [1926] Ch. 877.

Part XV.—Rent.

3590. *Add. Citations :*—*sub nom.* WINSTON *v.* PINKNEY, 3 Keb. 137 ; 2 Lev. 80 ; T. Raym.

Annotation :—**Reld.** Brownlow *v.* Hewley (1696), 1 Ld. Raym. 58.

3779. *Add. Annotation :*—**Reld.** Rye *v.* Purcell, [1926] 1 K. B. 446.

3930. *Add. Annotations :*—**Consd.** Dalton *v.* Pickard (1911), [1926] 2 K. B. 545, n. ; Richmond *v.* Savill, [1926] 2 K. B. 530.

4105. *Add. Annotations :*—**Reld.** Dalton *v.* Pickard (1911), [1926] 2 K. B. 545, n. ; Richmond *v.* Savill, [1926] 2 K. B. 530.

4157. *Add. Annotation :*—**Mentd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

4163. *Add. Annotation :*—**Reld.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

Part XVII.—Assessments, Charges, Outgoings, etc.

4458. *Add. Annotation :*—*Generally*, **Reld.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4464. *Add. Annotation :*—**Reld.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4465. *Add. Annotation :*—**Reld.** Lowther *v.* Clifford (1926), 135 L. T. 200.

4467. *Add. Annotation :*—**Reld.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4468. *Add. Annotation :*—**Reld.** Lowther *v.* Clifford (1926), 135 L. T. 200.

4471. *Add. Citations :*—[1927] 1 K. B. 130 ; 95 L. J. K. B. 576 ; 135 L. T. 200 ; 90 J. P. 113 ; 24 L. G. R. 231.

4477. *Add. Annotation :*—**Reld.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4479. *Add. Annotation :*—**Reld.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4489. *Add. Annotation :*—**Apld.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4503. *Add. Annotation :*—**Reld.** Lowther *v.* Clifford (1926), 135 L. T. 200.

Part XVIII.—Repairs.

4569. *Add. Citations :*—90 J. P. 195 ; 24 L. G. R. 327.

4578. *Add. Annotations :*—**Reld.** Fisher *v.* Walters, [1926] 2 K. B. 315.

4582. *Add. Annotations :*—**Consd.** Griffin *v.* Pillet, [1926] 1 K. B. 17. **Reld.** Fisher *v.* Walters, [1926] 2 K. B. 315.

4584. *Add. Annotation :*—**Distd.** Fisher *v.* Walters, [1926] 2 K. B. 315.

4588. *Add. Annotation :*—*As to* (2) **Consd.** Fisher *v.* Walters, [1926] 2 K. B. 315.

4662. *Add. Annotation :*—*As to* (2) **Consd.** Field *v.* Curnick, [1926] 2 K. B. 371.

4670. *Add. Annotation :*—**Reld.** Field *v.* Curnick, [1926] 2 K. B. 374.

4775. *Add. Annotation :*—**Reld.** Field *v.* Curnick, [1926] 2 K. B. 374.

4891. *Add. Annotation :*—*As to* (2) **Reld.** Fisher *v.* Walters (1926), 90 J. P. 195.

4903. *Add. Annotation :*—**Reld.** Fisher *v.* Walters (1926), 90 J. P. 195.

PART XV. SECT. 5, SUB-SECT. 1.—B.

repair.)—The landlord of a house an action against the tenant for decree for payment of the rent due. In defence the tenant averred that the landlord was in breach of his obligation to keep the premises in tenantable condition, in respect that he had failed to renew certain piping which he knew or ought to have known was defective, with the that burst defender's were & the rent, & also for the damage suffered by her :—*Held :* a landlord's claim for rent was liquid only if he had fulfilled his obligations under the mutual contract of lease. her rent. for the damage she alleged she suffered.—FINGLAND & MITCHELL *v.* HOWIE, [1926] S. C. 319.—SCOT.

PART XV. SECT. 6, SUB-SECT. 5.—C.

3984 1. *Lands inundated.*)—Unless there is any stipulation in the agreement of tenancy to the contrary, a tenant is not entitled to claim abatement of rent on the ground that the productive powers of the land have deteriorated by reason of its liability to inundation at high water. It is only when a part of the premises leased is entirely lost by inundation of the sea that an abatement of rent on that account can be claimed.—VISHWANATH KRIS (1925), I. L. R. 50 Bom. -IND.

PART XV. SECT. 10, SUB-SECT. E. (c).

sw.

A suit for rent is able against some of the heirs or successors-in-interest of a deceased tenant, without bringing all the heirs or successors-in-interest on the record. —JAGAN MOHAN SARKAR *v.* BROJENDRA KUMAR CHAKRABARTI (1925), I. L. R. 53 Calc. -IND.

PART XVIII. SECT. 5, SUB-SECT. 1.-B. (c).

4887 a balcony common to all the tenants was in condition & was unsafe, the landlord was notified of such condition, but did not repair it, thereafter a tenant fell from balcony & was injured :—*Held :* the landlord was liable.—AMIN *v.*). 47 N. L. R. 1.—S. AF.

Part XIX.—Waste.

5006. *Add. Annotation :—As to* (2) **Reld.** Rye *v.* Purcell, [1926] 1 K. B. 446.

Part XXI.—Assignment and Devolution of Leases.

5157. *Add. Annotation :—Generally,* **Mentd.** Public Trustee *v.* Elder, [1926] Ch. 776.

5192. *Add. Annotation :*—**Reld.** Chaplin *v.* Smith, [1926] 1 K. B. 198.

5226. *Add. Annotation :*—**Apld.** Chaplin *v.* Smith, [1926] 1 K. B. 198.

5241. *Add. Annotation :*—**Apld.** Chaplin *v.* Smith, [1926] 1 K. B. 198.

5284. *Add. Annotation :*—**Mentd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 580.

5367. *Add. Annotation :—As to* (2) **Reld.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5450. *Add. Annotations :*—**Consd.** Dalton *v.* Pickard (1911), [1926] 2 K. B. 545, n.; Richmond *v.* Savill, [1926] 2 K. B. 530.

Part XXI Assignment and Devolution of Reversion.

5701. *Add. Annotation :*—**Reld.** Rye *v.* Purcell, [1926] 1 K. B. 446.

5714. *Add. Annotation :*—**Consd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

5725. *Add. Annotation :*—**Reld.** Booth *v.* Thomas, [1926] Ch. 397.

5737. *Add. Annotation :*—**Apld.** Rye *v.* Purcell, [1926] 1 K. B. 446.

Part XXIII.—Notice to Quit.

5840. *Add. Annotation :*—**Distd. & N.F.** Newman *v.* Slade, [1926] 2 K. B. 328.

5841. *Add. Citations :*—95 L. J. K. B. 894; 135 L. T. 640; 42 T. L. R. 607.

5866. *Add. Annotation :—As to* (2) **Apld.** Newman *v.* Slade, [1926] 2 K. B. 328.

5980. *Add. Citation :*—95 L. J. Ch. 49.

Part XXIV.—Determination of Term.

6192. *Add. Annotation :*—**Consd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6231. *Add. Annotation :*—**Consd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6356. *Add. Annotation :*—**Reld.** Field *v.* Curnick, [1926] 2 K. B. 374.

6358. *Add. Annotation :*—**Reld.** Employers' Lia- [illegible], Collins,

6391. *Add. Annotation :—As to* (2) **Reld.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

6393. *Add Annotation :*—**Apld.** Chaplin *v.* Smith, [1926] 1 K. B. 198.

6627. *Add. Annotation :*—**Mentd.** *Re* Darwen &

[illegible], Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

6715. *Add. Annotation :*—**Mentd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

6762. *Add. Annotations :*—**Consd.** Dalton *v.* Pickard (1911), [1926] 2 K. B. 545, n.; Richmond *v.* Savill, [1926] 2 K. B. 530.

6764. *Add. Annotation :—As to* (2) **Consd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6766. *Add. Annotation :*—**Consd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6767. *Add. Citation :*—95 L. J. K. B. 1052, n.

Add. Annotation :—**Consd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6768. *Add. Citation :*—95 L. J. K. B. 1042.

PART XXIII. SECT. 2, SUB-SECT. 3. A.

case of a rural tenancy from year to year a year's notice to quit is not necessary, a reasonable notice only being required. Notice given in Jan. to quit at the end of the following June is reasonable.—Tekabalala *v.* Van Der Merwe (1926), 47 N. L. R. 75.—**S. AF.**

PART XXIII. SECT. 2, SUB-SECT. 3. D.

5840 f. *What amounts to notice.*]—In order that a tenancy may be determined by a notice to quit, the notice must be one which expires at the end of a periodic week from the commencement of the —How *v.* Mansfield, [1923] N. Z. L. R. 91.

PART XXIV. SECT. 1, SUB-SECT. 2. A. (b) ii.

right of non-payment for days—Terms of

]—Upon for ejectment, the set up answer that they had the terms of the lease & were under the impression that the terms were similar to those of a previous lease, which gave them seven days' grace to pay the arrear rent:—*Held:* as the provision in the lease giving only five days' grace was clear & unambiguous, the answer was no defence.—Illing *v.* Mann & Mann (1925), 46 N. L. R. 55.—**S. AF.**

PART XXIV. SECT. 2, SUB-SECT. 3. B. (b) i.

ed. acted on by parties.]

of an existing by the tenant, & the grant of a lease by the landlord, can be inf from a written obligation on the part of the landlord to grant a new lease by actings of parties amoun - to *res intervenius* & by possession on the part of the tenant, not only where the landlord is a fee-simple proprietor, but also where he is an heir in possession; & a lease so is binding upon succeed- of entail.—Campbeltown Coal Co. *v.* Argyll. (Duke), [1926] S. C. 126.—**SCOT.**

Part XXV.—Delivery and Recovery of Possession.

6945. *Add. Annotation :*—**Mentd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 305.

Part XXVII.—Rent and Mortgage Restriction Acts.

7036. *Add. Annotation :*—*As to* (2) **Reld.** Catto *v.* Curry, [1926] 1 K. B. 460.

7037. *Add. Citation :*—24 L. G. R. 321.

7037a. **Rent-free tenancy.**]—The Rent Restriction Acts afford no protection to a tenant who is rent-free.—BRACEY *v.* PALES (1926), 43 T. L. R. 69, D. C.

7040. *Add. Annotations :*—*As to* (1) **Distd.** Leslie *v.* Cumming, [1926] 2 K. B. 417. *As to* (2) **Reld.** Thompson *v.* Rolls, [1926] 2 K. B. 426.

7041. *Add. Citations :* 95 L. J. K. B. 1007 ; 24 L. G. R. 315.

Add. Annotation :—*As to* (2) **Reld.** Thompson *v.* Rolls, [1926] 2 K. B. 426.

7047. *Add. Citation :*—24 L. G. R. 147.

Add. Annotation : **Reld.** Catto *v.* Curry, [1926] 1 K. B. 460.

7049. *Add. Annotation :*—**Consd.** Jewish Maternity Soc. Trustees *v.* Garfinkle (1926), 95 L. J. K. B. 766.

7051. *Add. Citations :*—135 L. T. 476 ; 24 L. G. R.

7061. *Add. Annotation :*—**Consd.** Leslie *v.* Cumming, [1926] 2 K. B. 417.

7062. *Add. Annotation :*—**Reld.** Leslie *v.* Cumming, [1926] 2 K. B. 417.

7063. *Add. Citations :*—95 L. J. K. B. 1 ; 134 L. T. 21 ; 24 L. G. R. 27.

Add. Annotations :—**Reld.** Leslie *v.* Cumming, [1926] 2 K. B. 417 ; Thompson *v.* Rolls, [1926] 2 K. B. 426.

7091. *Add. Citation :*—24 L. G. R. 250.

7095. *Add. Citation :*—24 L. G. R. 321.

7132. *Add. Annotation :*—*As to* (2) **Reld.** Leslie *v.* Cumming, [1926] 2 K. B. 417.

7135. *Add. Annotation :*—*As to* (1) **Consd.** Bracey *v.* Pales (1926), 43 T. L. R. 69.

7254. *Add. Annotation :*—**Distd.** Campbell *v.* Lill (1926), 135 L. T. 26.

7281. *Add. Annotation :*—**Consd.** Standingford *v.* Bruce, [1926] 1 K. B. 466.

7291. *Add. Citations :*—95 L. J. K. B. 901 ; 24 L. G. R. 531.

7307. *Add. Citation :*—24 L. G. R. 141.

7320. *Add. Citation :*—24 L. G. R. 192.

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